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and
CENTER FOR JUSTICE AND DEMOCRACY

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FORUM ON MALPRACTICE

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TUESDAY

FEBRUARY 11, 2003

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The Forum on Malpractice met in Room
2141, Rayburn House Office Building, at 10:00 a.m.,
Congressman John Conyers, Chairman, presiding.

PRESENT

THE HONORABLE JOHN CONYERS, U.S. House of
Representatives

THE HONORABLE BILL DELAHUNT, U.S. House of
Representatives

THE HONORABLE JAN SCHAKOWSKY, U.S. House of
Representatives

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PRESENT (Continued):

THE HONORABLE BOBBY SCOTT, U.S. House of
Representatives

THE HONORABLE MAXINE WATERS, U.S. House of
Representatives

THE HONORABLE TONY WEINER, U.S. House of
Representatives

THE HONORABLE ROBERT WEXLER, U.S. House of
Representatives

JOAN CLAYBROOK, Public Citizen

JOANNE DOROSHOW, Center for Justice and
Democracy

RAUL KING, Congressional Research Service

NIKKOLL BOATWRIGHT, Witness

EARLENE BURNEY, Witness

ANN MARIE CHAFFINS, Witness

RICHARD FLAGG, Witness

JODIE JOHNS, Witness

TERESA KIATSOULAS, Witness

SHERRIE KELLER, Witness

DYLAN MALONE, Witness

JUSTIN MATTES, Witness

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PRESENT (Continued):

JOHN McCORMACK, Witness

LINDA McDOUGAL, Witness

ARCHIE MOORE, Witness

ARIBA MOORE, Witness

KATHY OLSEN, Witness

FRANK RODRIGUEZ, Witness

DANIEL STRATMAN, Witness

SUSAN STRATMAN, Witness

DEBORAH SURLAS, Witness

CAMILLE TEISCHMAN, Witness

MARGARET TORTORIELLO, Witness

KIM TUTT, Witness

ED WHIDDON, Witness

LINDA WOLF, Witness

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P R O C E E D I N G S

(10:09 a.m.)

MR. CONYERS: Good morning, everyone.

We're meeting here today with friends from on and off the Hill about medical malpractice. It's a forum, and we're going around the room just so that everybody -- I'm sorry I can't offer everyone coffee and doughnuts or brunch or whatever happens at this hour of the day in your area.

We want to kind of get to know who's talking besides just a name, and so I want to introduce myself as John Conyers from Michigan. I'm on the Judiciary Committee.

And right next to me is my dear colleague from Virginia.

MR. SCOTT: Bobby Scott from the Third District of Virginia. I also serve on the Judiciary Committee.

MR. CONYERS: And Bobby Scott was also in the Senate in the State of Virginia, and we're happy to have him here with his experience.

MR. SCOTT: Thank you.

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1 MS. OLSEN: My name is Kathy Olsen, and
2 I am from California.

3 MR. CONYERS: Yeah, but tell us a little
4 bit. Come on, Kathy.

5 MS. OLSEN: Do you want me to go --

6 MR. CONYERS: No, no. Just give us a
7 minute's worth.

8 MS. OLSEN: Okay. I came here for my
9 son, Stephen, who at page 2 was a victim of medical
10 negligence.

11 MR. CONYERS: Okay.

12 MS. OLSEN: So I am here 11 years later
13 still working on the same issue.

14 MR. CONYERS: All right.

15 MS. CLAYBROOK: Good morning, Mr.
16 Chairman. I am Joan Claybrook. I am President of
17 Public Citizen, a long time consumer advocate on
18 behalf of citizens' interests.

19 MR. KING: Good morning, Mr. Chairman.
20 My name is Raul King.

21 MR. CONYERS: It's not working. Push
22 it.

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1 MR. KING: Okay. Good morning, Mr.
2 Chairman. My name is Raul King. I'm an economist,
3 an analyst in industry economics of the
4 Congressional Research Service, which is part of the
5 Library of Congress.

6 MR. CONYERS: I'm glad you're here.

7 MS. CHAFFINS: My name is Ann Marie
8 Chaffins, and I'm from West Virginia, and I'm here
9 today because a doctor took away my right to have
10 children.

11 MS. BURNEY: My name is Earlene Burney.
12 I'm from Clarksville, Tennessee, and I am here
13 because my mother was a victim of nursing home abuse
14 and neglect and it caused her death.

15 MS. JOHNS: My name is Jodie Johns. I'm
16 from Inver Grove Heights, Minnesota. I'm here
17 because my five and a half year old son has been
18 brain damaged permanently due to a very easily
19 preventable condition. He has brain damage due to
20 jaundice.

21 MR. McCORMACK: Good morning. My name
22 is John McCormack from Massachusetts. I'm a police

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1 officer and a Dessert War war veteran. I'm here on
2 behalf of my daughter, Taylor, that died of medical
3 negligence and abandonment, my 13 month old child.

4 MR. CONYERS: Thank you for coming.

5 MS. TORTORIELLO: Good morning, Mr.
6 Chairman. My name is Margaret Tortoriello, and I am
7 from New Jersey, and I am here on behalf of the fact
8 that my doctor abused, lied, and mistreated me for a
9 period of 15 years, giving me 14 unnecessary
10 operations which led to my problems.

11 Thank you.

12 MR. CONYERS: Justin.

13 MR. MATTES: Good morning, Mr. Chairman.

14 MR. CONYERS: Good morning.

15 MR. MATTES: My name is Justin Mattes.

16 (Unintelligible.)

17 MR. CONYERS: Thank you, Justin, for
18 coming.

19 MS. STRATMAN: Good morning, sir. I'm
20 Sue Stratman from St. Louis, Missouri, and I'm here
21 on behalf of Daniel, our 18 year old son who six
22 years ago was injured during routine hernia surgery

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1 by an anesthesiologist who made many mistakes in the
2 OR and then left my son unattended. She left the
3 room, and Daniel suffered severe brain damage as a
4 result.

5 MR. POMERANTZ: Good morning, sir. I'm
6 Howard Pomerantz. I'm here with Alicia Moore, who
7 is three years old, and her mother Ariba and her
8 father Archie from Miami, Florida, and as a result
9 of medical malpractice, Alicia has lost both legs
10 above the knee, her left arm above the wrist, and
11 she has several finger stumps remaining on her right
12 hand.

13 MR. CONYERS: Welcome, family.

14 MR. FLAGG: Good morning, Mr. Chairman.
15 My name is Richard Flagg. I'm from Jersey City, New
16 Jersey, and I'm a victim of medical malpractice in
17 that I was supposed to have a tumor taken out of my
18 left lung, and they removed the right lung, and now
19 there's not enough lung left to operate.

20 MR. CONYERS: Thanks for coming.

21 MS. WOLF: Good morning, Mr. Chairman.
22 I'm Linda Wolf. I'm here basically representing

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1 Ben, who died a wrongful death due to medical
2 negligence. He was a surgeon himself. He went in
3 for a routine laproscopic gall bladder procedure.
4 The surgeon perforated the bowel and failed to
5 diagnose the complication in time, and it was a
6 failure of an entire system. No one came to his
7 aid. No one advocated for him, and he ended up
8 dying of septic shock.

9 MS. SURLAS: Good morning. I'm Debbie
10 Surlas. I'm a victim of medical malpractice on the
11 part of a hospital and an ophthalmologist. I was
12 misdiagnosed and left blind in one eye and am
13 visually impaired in the other eye.

14 MS. BOATWRIGHT: Good morning, everyone.
15 My name is Nikkoll Boatwright, and I'm from Miami,
16 Florida. I am here on behalf of my mother, which
17 died on a delay of breast cancer diagnosis.

18 MR. CONYERS: Thank you for coming.

19 MS. DOROSHOW: Thank you, Mr. Chairman.
20 My name is Joanne Doroshow. I'm the Executive
21 Director of the Center for Justice and Democracy.

22 MR. MALONE: Thank you for having this

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1 forum. I'm Dylan Malone from Everett, Washington,
2 and gross medical negligence left my son with severe
3 irreparable brain damage. He can't suck or swallow
4 or hold his head up or speak, and I'm here to tell
5 you more about him.

6 MS. TUTT: Good morning. My name is Kim
7 Tutt, and I'm from Tyler, Texas. I am here because
8 I was misdiagnosed with cancer of the jaw and had
9 some radical surgery because of a cross-
10 contamination in a lab.

11 MS. McDOUGAL: Good morning, everyone.
12 My name is Linda McDougal, and I'm a victim of
13 medical malpractice. Either months ago I had both
14 breasts removed because of an error by pathologists.

15 MR. CONYERS: Thank you very much.

16 I'm happy that all of you could come. I
17 know it was at some travail and expense, but I think
18 it's important that we all get together here today.

19 Let me ask my dear friend and colleague
20 on the Judiciary, Congressman Bobby Scott of
21 Virginia, to begin our discussion.

22 MR. SCOTT: Thank you, Mr. Chairman, and

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1 I'm pleased that you're holding this forum on
2 medical malpractice.

3 We have a problem that the majority
4 party has refused to hold a hearing on medical
5 malpractice, notwithstanding the fact that they
6 intend to bring a bill up which has very many
7 provisions in it without setting the record
8 straight.

9 What you saw last Congress and what
10 we're likely to see again is the majority party
11 intent on convincing the public the public that
12 there is a medical malpractice insurance crisis
13 across the country caused by frivolous lawsuits.
14 What we'll here today is that there is a medical
15 malpractice death and injury crisis caused by a
16 small contingent of negligent doctors who inflict
17 pain and suffering on an unsuspecting public.

18 Close to 100,000 people are killed each
19 year due to medical malpractice. To the extent that
20 there is an insurance problem, we'll see today that
21 that problem is caused by a drop in the stock market
22 and not by frivolous lawsuits or claims going up.

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1 The legislation that we expect to see
2 will establish a national statute of limitations
3 more than likely. We haven't seen the bill. So
4 we're just speculating that this is since they
5 brought it up last time the same thing again this
6 year, establishing a national statute of limitations
7 which is much shorter than most states have. It has
8 the bizarre effect of having a statute of limitation
9 barring lawsuits that may come even though the
10 injury may not have manifested itself. Many of the
11 injuries that are inflicted, you do not know you are
12 injured until a year or two later. That may be too
13 late to bring a lawsuit under some of these bills.

14 We see caps on non-economic damages or
15 pain and suffering. For children, elderly and
16 others with limited income this would severely limit
17 the amount of recovery in some of the worst cases of
18 malpractice.

19 Caps on plaintiff's attorney's fees.
20 It's interesting to note that there's on cap on
21 defense attorney's fees, and the defense and the
22 insurance companies do not pay the plaintiff's

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1 attorney's fees. So whatever the plaintiff's
2 attorney charges the insurance company doesn't have
3 to pay. If it's half, if it's nothing, the
4 insurance company has to pay the same thing
5 regardless of what the fee is.

6 Elimination of joint and several
7 liability. When the health industry insures itself
8 against a loss, they insure against the total loss.
9 When you have to go look and find each and every
10 person that may have had a part in your malpractice,
11 all that does is shifts the burden on somebody who
12 doesn't know what happened. All they know if
13 something went wrong, and they were injured. The
14 people that know what happened will be pointing the
15 finger at each other, and the plaintiff will end up
16 getting a recovery that does not represent the full
17 recovery, but just those that they could track down
18 and those that happen to have insurance.

19 Eliminating the collateral source rule
20 which says if somebody has insurance, the benefit of
21 that insurance goes to the wrongdoer, not back to
22 the insurer, not back to Blue Cross/Blue Shield that

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1 paid the bill or to the plaintiff that had the
2 foresight of having insurance and ought to be better
3 off because of that, but to the wrongdoer.

4 If anybody deserves the benefit of
5 paying the premiums, it ought to be the person that
6 paid the premium or Blue Cross/Blue Shield. The
7 last person in line for that benefit ought to be the
8 wrongdoer.

9 And then we have the one way preemption
10 which says if a state has any provision less
11 favorable to the consumer than what's in the bill,
12 then the state law will prevail. That is a perverse
13 situation because the state laws have good things
14 and bad things in them, and there's a balance, and
15 if the state wants to change the balance, they can,
16 but to suggest all of the bad things in the bill
17 from the consumer's perspective ought to stay and
18 all of the good things get preempted is not fair to
19 those who are injured.

20 Mr. Chairman, as I said, the majority
21 has elected not to have a hearing so that all of the
22 facts could come out, and I want to thank you for

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1 holding this forum today so that the public can be
2 informed of the devastating damage inflicted on the
3 victims by malpractice and the fact that the
4 malpractice insurance crisis is not caused by these
5 claims. It's caused by a few wrongdoing physicians
6 and a stock market that has essentially collapsed.

7 MR. CONYERS: Thank you for getting us
8 started, Congressman Bobby Scott, Virginia. We'll
9 be counting on your experience as we move through
10 this 108th Congress.

11 I'm happy that Tony Weiner from New
12 York, a former councilman of New York, an aide for
13 many years to Senator Chuck Schumer, and a member of
14 the Judiciary Committee, has joined us today, and I
15 yield to him now.

16 MR. WEINER: Thank you, Mr. Chairman.

17 I appreciate the opportunity, and I will
18 be brief.

19 About the only thing surprising about
20 this push for this legislation is how, in the
21 context of the Judiciary Committee recently, how
22 unsurprising it really is. This has been a Congress

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1 that has raised the heights of mean spiritedness and
2 cold heartedness even more so than we thought they
3 ever could.

4 This is a committee that sought to take
5 away the rights of the victims of asbestosis, people
6 who had breathed asbestos for years and then they
7 lost their rights if it were up to the Judiciary
8 Committee to even go into court and recover for the
9 damage done to them.

10 This is a committee that in the heights
11 of the worst recession and tax cuts to the very
12 wealthiest sought to make victims again out of
13 people who were in the unfortunate position of
14 having to declare bankruptcy because of misfortune,
15 forcing them to pay their credit card companies
16 before they pay child support.

17 So the fact that we're here talking
18 about a bill that would essentially penalize, again,
19 people who are victims of medical malpractice by
20 putting a dollar amount so low on their suffering
21 that it was probably the equivalent of about 30
22 seconds of decline in the stock market for some of

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1 the heads of these companies; the fact that the
2 value that it puts on human life, whether it be
3 someone of age six or 60, shows us just how mean
4 spirited this legislation is.

5 And I guess in some recognition of that
6 level of maliciousness, they are not even having a
7 hearing to discuss it. And I must confess that if I
8 had proposed this, I'd be a little bit ashamed of
9 it, too.

10 But what we hope to do here today is to
11 try to do what we often don't do enough of in the
12 halls of Congress, and that is put a human face on
13 some of the suffering, put a human face on what the
14 results would be of this legislation.

15 And it's interesting to note that, you
16 know, we always hear about medical malpractice
17 lawsuits being the reason that premiums go up and
18 doctors are having trouble. In my area in New
19 Jersey and New York, doctors are complaining about
20 medical malpractice insurance problems.

21 In fact, it seems that these protests
22 always seem to arise, these rates always seem to

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1 spike at the exact same time when the insurance
2 industry is having trouble in the marketplace. You
3 want to find a correlation between the spike up in
4 premiums? Don't look at number of lawsuits. Much
5 more so you can look at the stock market.

6 You don't need to read the Legal Times
7 to find out when the insurance rates are going to go
8 up. You need to read the business section, and
9 that's what this is all about.

10 This is about greed, pure and simple.
11 But look who that greed is victimizing. We're going
12 to learn today of some stories, some real life
13 stories of people who have been through the medical
14 malpractice ringer.

15 And we have to remember something else.
16 Here in the Judiciary Committee where we talk about
17 the judiciary, the justice system and the court
18 system are supposed to be where the little guy gets
19 his day in court against the big guy. We're
20 supposed to be here protecting the little buy.

21 The courts are never going to be the
22 place that the high priced lobbyists have to go.

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1 They come here to Congress. The courts are the
2 place where individual citizens are protected
3 against abuse, and we have to make sure that that
4 always continues to be the case.

5 Our colleagues on the other side of the
6 aisle have refused to have a hearing, but that is
7 not going to mean that our voices will not be heard.

8 And I thank you, Mr. Chairman.

9 MR. CONYERS: Thank you very much.

10 I want to note for the record that it
11 was through the courtesy of Chairman Jim
12 Sensenbrenner of the Judiciary Committee from
13 Wisconsin that we're able to have this room and the
14 facilities that have been provided for us here.

15 I'm now turning to the member who I love
16 most to get an invitation from during the winter
17 months.

18 (Laughter.)

19 MR. CONYERS: That's the gentleman from
20 Florida, Robert Wexler, who is a lawyer of great
21 repute and I'm very pleased to say a member of the
22 Judiciary Committee.

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1 And we yield to you now at this time and
2 any invitations that you might have for the next
3 month or two would be happily received.

4 MR. WEXLER: Well, thank you, Mr.
5 Conyers.

6 I want to echo Congressman Weiner's
7 comments with respect to the worthiness of this
8 gathering and applaud Mr. Conyers and Mr. Scott for
9 initiating it.

10 There is undoubtedly a medical
11 malpractice crisis in many parts of the country. I
12 see there are two families here from Miami. In our
13 part of the world in South Florida, there is clearly
14 a medical malpractice crisis. Doctors in Palm Beach
15 County just two weeks ago did an informal strike and
16 went to a hotel for two days to listen to a
17 conference of insurance executives and medical
18 providers.

19 I know in other parts of the country, in
20 New Jersey and West Virginia, there have been maybe
21 more widespread strikes where medical providers have
22 taken to drastic action to making their point.

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1 There is a valid point, the point being
2 there is a medical malpractice crisis in America.
3 Insurance premiums have skyrocketed, but the
4 legitimate issue that this Congress needs to
5 address, if at all, and in particular, state
6 legislatures need to address, is what caused the
7 crisis and how should it be remedied.

8 And what this Republican Congress
9 unfortunately presents is a cap on damages. I was
10 shocked to learn that in Florida in the last
11 reported year, a state of roughly 16 million people
12 at this point, that the so-called frivolous,
13 horrific remedies -- if you had listened to the
14 propaganda of the last several months in Florida,
15 you would think that every day there are awards for
16 hundreds of thousands of dollars, if not millions of
17 dollars in medical malpractice cases.

18 In the last reported year, which I
19 believe was 2001, in the State of Florida, there
20 were 231, 231 actual awards in medical malpractice
21 cases in excess of \$250,000. That's a state of 16
22 million people.

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1 And so what the doctors and insurance
2 companies are highlighting as a remedy to this
3 problem is to take those 230 cases of which
4 unfortunately two people are here today that would
5 be examples of those in the State of Florida, and
6 destroy those people's opportunity to recover those
7 monies, and the artificial remedy that they present
8 is if we do that to these 230 people in Florida, the
9 problem in Florida will go away.

10 If it was that simple, it probably would
11 have been done years ago. The fact of the matter is
12 it is not that simple. As Congressmen Weiner and
13 Scott and Ranking Member Conyers have said, this is
14 an issue most particularly related to the
15 investments of insurance companies. It's an issue
16 related to the fact that insurance companies, in
17 addition to baseball -- but baseball is not a part
18 of this hearing -- insurance companies are the only
19 industry that enjoy an anti-trust exemption, and it
20 would probably behoove this Congress to spend more
21 time examining whether or not insurance companies
22 deserve the antitrust exemption that they have and

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1 whether or not consumers of health care would be
2 better served by a congressional inquiry into the
3 antitrust exemption of insurance companies than they
4 are in an congressional effort to limit the ability
5 of the victims of malpractice to recover.

6 I very much want to hear from the people
7 today and, again, applaud Mr. Conyers and Mr. Scott
8 for initiating this, and thank you for giving me the
9 opportunity to speak.

10 And if I could say one more thing, I
11 don't know how many of you had an opportunity to
12 watch the President during his State of the Union
13 address. We are a country that needs to unify in
14 the context of the war on terror, in the context of
15 the threats that face us as Americans. I found it
16 utterly disastrous in terms of unifying American
17 when the President of the United States in the pomp
18 and circumstance and the greatness of the State of
19 the Union address on four different occasions takes
20 the specific point of highlighting trial attorneys
21 as being those that are causing so many of the
22 difficulties that face this country. It was a cheap

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1 effort by the greatest office in the greatest
2 democracy in the history of the world to take
3 America's very complex problems and try to pinpoint
4 an individual group of people and make them the
5 burden of the problem, when unfortunately for the
6 most part the facts do not bear that out.

7 Thank you very much.

8 MR. CONYERS: Thank you, Congressman
9 Wexler.

10 One of the Congressmen who is very close
11 to me is from Massachusetts. His name is Bill
12 Delahunt. He serves on the Foreign Affairs
13 Committee and the Judiciary Committee. He started
14 out on the Judiciary Committee. He went to Haiti so
15 many times they said, "We ought to put you on the
16 Foreign Affairs Committee, too." And he still works
17 with us, and we're very proud that he's here today.

18 I yield to him now.

19 MR. DELAHUNT: Well, thank you, Mr.
20 Conyers.

21 Let me just echo the sentiments that Bob
22 Wexler just articulated.

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1 First, thanks to you and to Bobby Scott
2 and to those that came forward to testify today, I
3 think this is very important. I know I look around
4 here and I see Anthony. I see Bob Wexler, and I
5 know members who were not scheduled to come back
6 until later today, but this is really very important
7 that you're here so that we get the truth out.

8 Representative Wexler referred to the
9 antitrust exemption, but even before that, your
10 presence here as individuals who have suffered
11 because of negligence, you are really the true
12 story, the true story. And as Mr. Wexler indicated,
13 to try to define and reduce this to a 30 second
14 sound byte and put in it in strident terms an "us"
15 versus "them" kind of confrontation disservices all of
16 us, disservices the American people.

17 This has nothing to do with trial
18 lawyers. This has to do with justice, and that's
19 why you're here today, and I'm grateful that you're
20 here, that you took the time, that you came down to
21 tell your stories to members of Congress and to the
22 American people because it's the American people in

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1 the end, their judgment, their sense of fair play,
2 their sense of equity that make the difference in
3 this country.

4 Your democracy works, and I extend my
5 gratitude along with those of my colleagues for your
6 coming here today. I look forward to hearing from
7 you.

8 MR. CONYERS: Thank you, sir.

9 Congress Woman Maxine Waters of
10 California-Los Angeles was in the room. She'll be
11 back shortly no doubt.

12 I'd like now to turn to a gentleman I
13 called just this morning, prevailed upon him. I
14 won't say I begged him, but from the Library of
15 Congress, Mr. Raul King, on whom the Congressional
16 Research Service that provides us with background
17 information; they take no position on legislation or
18 issues, but they give us just the facts, and we're
19 grateful that he could come here for a little while.

20 And I'd like him to kind of lay this out
21 about how the pricing and underwriting and the
22 business of insurance goes on, just to give us a

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1 little background in that area.

2 Thank you for coming this morning.

3 MR. KING: Thank you, Mr. Conyers.

4 It is, indeed, a tremendous honor to be
5 here, but as you indicated, one hour ago I never
6 expected to be here.

7 (Laughter.)

8 MR. KING: And it's so interesting.
9 This year in my church, the theme at my church,
10 Greater Mount Calvary Holy Church is the Year of
11 Opportunity. Thank you for giving me this
12 opportunity to expound on an issue that's very
13 important.

14 I've been sitting at CRS for the last 16
15 years watching the insurance industry very closely.
16 I have worked in the insurance industry at a Fortune
17 100 company. I have a background in the insurance
18 industry. I'm an economist as well.

19 To be very brief, the medical
20 malpractice issue is a very, very, very complex
21 issue. It is not simple. Where we are right now,
22 we're going through a medical malpractice crisis.

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1 It is the third one that we've had in the last three
2 decades. We have had similar crises in the early
3 1970s, in the mid-1980s, and again currently.

4 There is a pattern in the insurance
5 industry called underwriting cycle, and many believe
6 that the reason why we're in this malpractice
7 insurance crisis today is because of that
8 underwriting cycle, and some of the factors that go
9 into the pricing and availability of insurance.

10 By way of background, in the 1970s and
11 '80s, you had a general liability insurance crisis
12 and medical malpractice was just wrapped up in that.
13 Today the focus is the medical malpractice area.
14 Many believe that the reason why we are in this
15 crisis, like I said, is the underwriting cycle, and
16 the number of factors that insurance companies will
17 consider in making this product available in the
18 marketplace.

19 What you're doing is you're managing a
20 risk, the risk that a doctor will make a mistake and
21 error. You're managing that risk, and for the
22 insurance company to manage the risk, you have to

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1 pay them a premium. They set a price, and that
2 price, which is developed by an actuary, is then
3 given to an underwriter within an insurance
4 department.

5 The underwriter will go into the
6 marketplace based on competition, will then adjust
7 those manual rates to charge a rate that they feel
8 they can be competitive and earn a certain amount of
9 money.

10 The pricing and the rate making is very,
11 very complex, and we can get into that, but what are
12 the signals in developing those prices? What are
13 the signals in the marketplace in developing those
14 prices?

15 Some people believe that because of the
16 McCann-Ferguson Act of 1945 and the industry's
17 exemption from the antitrust laws, it allows them to
18 set rates arbitrarily, and again, I'm laying out the
19 arguments for one side of the coin, which is the
20 underwriting cycle as a cause of this problem.

21 Incidentally, the other side of the
22 problem is what this hearing is about, the fact that

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1 you have frivolous lawsuits and the need for tort
2 reform. So there are two parts to this medical
3 malpractice issue. What I'm doing now is just
4 laying out the underwriting cycle as one cause and
5 getting into pricing and underwriting and how it
6 works in the marketplace.

7 So the argument is that the insurance
8 companies, because of McCann-Ferguson, they will
9 set a price that allows them to be in the
10 marketplace. There's usually price leadership based
11 upon the largest company in a given state or in the
12 region or in the country. Other insurance companies
13 will follow the lead.

14 So when the economy is doing very well,
15 when interest rates are very high, when investments
16 are considered the yields are up pretty high,
17 insurance companies historically, some would argue,
18 would price their product in such a way to maximize
19 premium income and will then invest those premium
20 income in a very upwardly mobile, upward investment
21 market and earn a rate of return on their
22 investments to compensate for the lower prices

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1 they're charging.

2 When interest rates are high, income is
3 high. It's a wonderful thing. You're in the peak
4 of the cycle, insurance cycle. Typically over the
5 last few decades this cycle has been about six
6 years, three years up, three years down.

7 What has happened in the 1990s, after
8 the last medical malpractice crisis in the mid-'80s
9 is that in the 1990s the markets were up. For an
10 extended period of time interest rates were
11 relatively low, but the bottom line is that
12 investments were very, very high, and they can
13 continue to price their business in such a way to
14 maximize premium for investment purposes.

15 Some would argue that starting in 2000
16 when not only the medical malpractice area but
17 insurance in general ,not just medical malpractice,
18 but all P&C, property and casualty insurance, when
19 the market cycle started to turn, investments were
20 not what they expected. Interest rates were low,
21 and across the board rates started firming up.

22 Incidentally, when the market is

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1 considered soft, coverage is readily available.
2 Prices are relatively low. The insurance company
3 will make their products available in the
4 marketplace, and they will aggressively sell as much
5 as they can because they want the business, and it's
6 intensely competitive.

7 Some would argue that this soft market
8 that went beyond the six years but right up close to
9 ten years, and this what the consumer groups have
10 argued as cash flow underwriting what Bob Hunter,
11 for example, would argue is cash flow underwriting,
12 they run into a problem. Their investments can't
13 cover their premium losses and underwriting losses.

14 So what they have to do is to increase
15 premiums dramatically. They have to in some cases
16 withdraw from the marketplace, change the amount of
17 insurance they'll make available in the marketplace.
18 Rather than selling a \$500,000 policy, they'll sell
19 only a \$250,000 policy, and that's all that's
20 available in a given state.

21 And in some cases, some insurance
22 companies will become insolvent. Some insurance

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1 companies will remove themselves from the
2 marketplace in a given state. Some insurance
3 companies will go into other lines of business
4 because they feel they can't earn the profits that
5 they expected in the medical malpractice or some
6 other line of insurance. So capital moves around.

7 So that is one argument, the
8 underwriting cycle argument, for why it is that
9 we've had these three crises in the last three
10 decades.

11 But on the other side of the coin, the
12 insurance companies will argue that, look, this is a
13 business. We're managing risk, the risk that a
14 doctor and medical provider will make an error, and
15 we will accept that risk in exchange for a premium,
16 and we have to be compensated for that, and you
17 cannot take away our right to earn a certain level
18 of income for our business.

19 And the only way to address that is to
20 look at the cost side of the equation and look at
21 claims, and the argument is that the claims have
22 been increasing, and that there should be a way to

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1 manage the rapid increase in claims. They point to
2 the explosion in litigation. We're a litigious
3 society, and we have to do something about claims.

4 Hence, proposals at the state level and
5 at the federal level to essentially have tort
6 reform, put a cap on non-economic damages, impose a
7 collateral rule requirement so that you cannot
8 account for while in a trial, various other efforts
9 of tort reform.

10 The idea there is that they're trying to
11 look at the cost side. Let me just say having laid
12 out the two principal causes, you know, for the
13 malpractice insurance crisis, at CRS we're actually
14 looking at this issue. We're in the early stages of
15 looking at this, and we have done -- I have done
16 actually some analysis looking at studies that were
17 done, that were performed looking at the results of
18 tort reform in the '70s and '80s, and I can say that
19 the data is inconclusive as to whether tort reform.
20 That's what the data would suggest.

21 I mean you look at the range of study.
22 You look at, for example -- I can just list. I

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1 didn't come prepared with all of the studies.

2 MR. CONYERS: Well, I don't want to cut
3 you off, but we would have liked you to be a witness
4 before the full committee. I know you're going to
5 be working with us on this. I had questions that I
6 wanted to raise, but Attorney Ted Caylor (phonetic)
7 on my staff has suggested that we don't want to take
8 away from all of the people that have come here.

9 So I'm going to have to keep in touch
10 with you, but thank you for your willingness to come
11 forward and put this in some perspective.

12 MR. KING: Congressman, thank you very
13 much for the opportunity, and my comments seemed
14 rambléd, but like you said, 45 minutes ago. I'm so
15 sorry, but it's the best I can do for now.

16 MR. CONYERS: They weren't rambléd at
17 all. They were excellent. I'm very grateful to you
18 for your knowledge and for your availability.

19 MR. SCOTT: Mr. Chairman.

20 MR. CONYERS: Yes, sir, Mr. Scott.

21 MR. SCOTT: Mr. Chairman, I would ask
22 Mr. King as he develops more information to try to

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1 allocate how much of an insurance company's profit
2 is made on stock investments as opposed to the
3 premium that they charge over the losses they pay
4 out. I suspect that a lot of companies actually pay
5 out more than they bring in, but they don't worry
6 about it because they're making so much money in the
7 meanwhile in the stockmarket.

8 So the market fluctuations are actually
9 what runs the price, not the risk that they're
10 managing. If you could help us on that with your
11 research, I'd appreciate it.

12 MR. KING: Can I just share with the
13 Congressman, if you don't mind, that that issue has
14 come up. Several members of Congress have asked GAO
15 to look at that very same question, and they're
16 doing that.

17 I spoke with representatives from the
18 National Association of Insurance Commissioners.
19 They have provided data to GAO. That study is being
20 done right now, and I can certainly get more
21 information on that.

22 MR. DELAHUNT: Mr. Chairman.

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1 MR. CONYERS: Yes, sir.

2 MR. DELAHUNT: Just one further request,
3 if I may.

4 As you proceed with your analysis, I
5 would be interested in the relationship between what
6 I perceive to be an under funded health care system,
7 if we do, in fact, have a health care system in this
8 country and how that translates into providers,
9 whether they be physicians, hospitals, nurses,
10 whoever provides health care in this nation in terms
11 of the stress factor that's involved.

12 As we read through some of the synopses
13 of those who will be speaking here today, is there a
14 direct relationship between the demands that are now
15 placed on health care providers and the fact that we
16 have a shortage of nurses; we have physicians that
17 are leaving; and, therefore, we don't have a health
18 care system that is adequate to prevent the kind of
19 tragedies that we know in reality occur?

20 I'd love to see that kind of analysis.

21 MR. CONYERS: Okay, very good. Before
22 Linda McDougal begins and we hear from all of you

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1 around the table and others actually, I do want to
2 call on Joan Claybrook of Public Citizen, which is a
3 non-government organization that works on a lot of
4 areas, work with the Judiciary Committee quite a
5 bit, but I'd like to recognize her at this time.

6 Ms. Claybrook.

7 MS. CLAYBROOK: Thank you very much, Mr.
8 Conyers. I deeply appreciate the opportunity to
9 testify today.

10 We are going to hear some horrendous and
11 heart wrenching stories from people whose lives have
12 been devastated because doctors have made grievous
13 errors, and they live with these tremendous
14 tragedies their whole live. It's important to hear
15 their stories and we deeply appreciate this
16 opportunity to hear them. They are truly the heart
17 and soul of this debate.

18 We must remember that what law makers do
19 will have an enormous impact on these people who
20 have been horribly injured, many of them suffering
21 for a lifetime and on so many other people.

22 Many people don't realize that up to

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1 100,000 people a year are killed by medical
2 malpractice. That's more than all of the traffic
3 fatalities, all of the breast cancer deaths, and all
4 of the AIDS deaths in this country. It's huge.
5 This is a huge problem. Many people don't realize
6 that.

7 The Bush administration says that a cap
8 of \$250,000 is enough for all of the pain and the
9 suffering and the losses that these and other
10 victims have incurred. That amount, \$250,000,
11 sounds like a lot of money. It may sound like a lot
12 of money on space, but let's compare it to the
13 salary and the compensation paid to the executives
14 of the top medical malpractice insurance companies.

15 And we have a chart that we just point
16 out here today. One of the most highly paid CEOs,
17 Paul Fishman of St. Paul Insurance Company, which
18 recently stopped writing medical malpractice,
19 received \$9.8 million in salary and compensation in
20 2001. The administration's cap amounts to less than
21 ten days of work by Mr. Fishman, ten days of work
22 with no pain and suffering, by the way.

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1 Now, look at it another way. Mr.
2 Fishman made more in one year than the total amount
3 that 75 malpractice survivors could receive if pain
4 and suffering were capped at \$250,000, and we
5 believe that's downright unfair.

6 As we're going to hear today, pain and
7 suffering is very real. If you're a 20 year old
8 survivor of medical malpractice with a normal life
9 expectancy and confined to a wheelchair, \$250,000
10 translates to \$12 a day, \$12 a day.

11 I don't know whether many people in this
12 room have tried to operate their lives out of a
13 wheelchair. It's horrible. It's terrible. It's
14 complicated, difficult.

15 That's a pittance, of course, and it
16 illustrates how administration officials place the
17 interest of corporate fat cats over the interests of
18 consumers, in this case injured plaintiffs and
19 patients.

20 Those hurt most by the doctor errors are
21 those who would be harmed by this damage cap. Let
22 me say that again. Those who are most hurt by a

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1 doctor error are those most hurt by this cap because
2 if you have a minor injury, you probably wouldn't
3 reach the cap, but if you have a horrendous injury,
4 you are going to be hurt by this cap.

5 That seems to be getting lost in this
6 policy debate. In fact, doctors are trying to make
7 themselves the victims by walking off the job rather
8 than the people in this room. It's true that
9 doctors in some specialties have been force by the
10 insurance companies to pay higher insurance
11 premiums, much higher, but the insurance companies
12 are raising rates because they lost money in the
13 economic cycle, as Mr. King explained, not because
14 the number of claims against the doctor or size of
15 injury awards.

16 In fact, the insurance companies don't
17 set rates based on doctor performance as they do
18 for, say, car drivers. That is, the premiums have
19 spiked before and they're very temporary, but they
20 are paid for by the good doctors as well as the bad
21 doctors, not just the bad doctors.

22 But the people here today don't have

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1 temporary injuries. These are permanent. One of
2 the best ways to address this problem nationally is
3 prevention. To reduce the number of errors doctors
4 make and thereby to curb the number of people who
5 are injured and killed, and people don't sue if
6 they're not injured, a point that's not often made.

7 By the way, the total cost of the
8 medical malpractice system is \$6.7 billion a year.
9 that's what we pay each year for dog food, \$6.7 bill
10 a year. It's a small number in this society.

11 In analyzing information for the
12 national practitioner data bank, we have determined
13 that just five percent of the doctors are
14 responsible for 58 percent of the medical
15 malpractice payouts, and here we have a chart that
16 helps to show that.

17 And only one in six doctors who have
18 made medical malpractice payments have ever been
19 disciplined. Some of the individuals in this room,
20 I believe that Ann Marie Chaffins -- the doctor who
21 harmed her has 40 claims against her, and she was
22 investigated by the Medical Board, and she was given

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1 probation. She is still harming people today.

2 Medical Boards must crack down on
3 doctors who repeatedly err. It's horrendous for
4 many of the people here who I've heard their
5 stories, and they have never gone to their Medical
6 Board because they know that the Medical Board
7 probably isn't going to do anything, and by and
8 large, the numbers in the national practitioner data
9 bank show that.

10 But they don't show the doctor's name.
11 There's a number by the doctor's name. So we don't
12 know who these doctors are, but we can read their
13 stories, and they're terrible.

14 The data bank should be made public, by
15 the way, and consumers then would be better able to
16 protect themselves from bad doctors.

17 Thank you very much, Mr. Chairman, for
18 the opportunity to talk.

19 MR. CONYERS: Well, thank you so much.

20 Before we turn to Ms. McDougal and Ms.
21 Tutt, I want to call Joanne Doroshow, who has worked
22 in this area and wants to help set us up for our

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1 witnesses who will follow.

2 MS. DOROSHOW: Thank you, Mr. Chairman.

3 I will be very, very brief.

4 About 50 survivors of medical errors
5 have traveled to Washington today and tomorrow to
6 talk to Congress about misguided proposals that are
7 being proposed by the insurance industry and the
8 medical lobbies to try to solve an insurance problem
9 that the doctors are having on the backs of
10 patients.

11 Those of us in the room and those
12 consumer advocates also in the room that are working
13 very hard against this legislation know two things.
14 Number one, these proposals will have devastating
15 consequences on many innocent catastrophically
16 injured people.

17 And number two, it will do absolutely
18 nothing to assist doctors who are having an
19 insurance problem. The only way to solve that
20 problem is by reforming the insurance industry and
21 its own practices.

22 And I'll just finally say that my father

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1 sold insurance for a living. In fact, he
2 specialized in selling insurance to doctors, and he
3 died of colon cancer because his doctor just
4 misdiagnosed his cancer over a period of two years.

5 When my brother and I were cleaning out
6 his sock drawer, we found a chronology of his doctor
7 visits and missed diagnoses, and we know that he was
8 leaving that for us, preparing in case we wanted to
9 sue.

10 My brother and I are both lawyers, but
11 we didn't sue, and that's the typical situation.
12 Only one in eight people who are injured by medical
13 negligence in this country do sue, and very sadly
14 just a year ago this week one of my closest friends
15 died after a botched surgery and horrendous medical
16 care in a Florida hospital in Tallahassee, and in
17 assisting her family with her medical records, we
18 know that we probably will not be able to bring suit
19 in that case because Florida tort law is so bad for
20 people in her situation, in her family situation,
21 that basically it places very little value on her
22 life.

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1 These kinds of devastating medical
2 errors affect millions of us, and we're so grateful
3 for the people that have come and traveled to
4 Washington today to tell their stories. Many, many,
5 many millions of people are affected by this
6 problem, and we hope that as a result of their
7 telling stories to you today that we will be able to
8 change the perception that we need to do something
9 to reduce lawsuits or to cap damages and really
10 start focusing on the real culprit here, the
11 insurance industry.

12 So with that I would like to turn this
13 over to the people that have come to travel here
14 today.

15 MR. CONYERS: Thank you.

16 Ms. Linda McDougal of Wisconsin, we're
17 happy that you traveled here to be with us.

18 MS. McDOUGAL: Thank you, Mr. Chairman.

19 My name is Linda McDougal, and I'm a
20 victim of medical malpractice. I'm 46 years old. I
21 live with my husband and sons in Woodville,
22 Wisconsin, a small Norwegian community. My husband

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1 and I are both veterans of the United States Navy.
2 This is my story.

3 About eight months ago, in preparation
4 for an annual fiscal, I went for a routine
5 mammogram. I was called back for additional tests
6 and had a biopsy. Within a day I was told that I
7 had breast cancer.

8 My world was shattered. My husband and
9 I discussed the treatment options and decided on one
10 that would give me the best chance of living. We
11 made the difficult, life changing decision to
12 undergo what we believed was the safest long-term
13 treatment, a double mastectomy, complete removal of
14 both of my breasts.

15 Forty-eight hours after my surgery, the
16 surgeon came into my room and said, "I have bad news
17 for you. You never had cancer."

18 I never had cancer. My breast were
19 needlessly removed. The pathologist switched my
20 biopsy slides and paper work with someone else's.
21 Unbelievably, I was given another woman's results.

22 The medical profession betrayed the

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1 trust I had in them. It's been very difficult for
2 me to deal with this. My scars are not only
3 physical, but emotional as well.

4 After my breasts were removed, I
5 developed raging infections, and I had to have an
6 emergency surgery. Neither eight months later I'm
7 still suffering from infections, and I cannot
8 continue the reconstruction process. I do not know
9 when I will be able to do this. I don't even know
10 if I will ever have anything that ever resembles
11 breasts again.

12 After I came forward publicly with my
13 story, I was told that one of the pathologists
14 involved had a ten year exemplary performance record
15 and that she would not be reprimanded or punished in
16 any way until a second incident occurred.

17 Should someone else have to suffer or
18 possibly even die before any kind of disciplinary
19 action is taken?

20 Now there's a proposal to limit the
21 rights of people like me who have suffered permanent
22 life altering injuries. Arbitrarily limiting

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1 victim's compensation is wrong. Malpractice victims
2 may never be able to work again and may need help
3 for the rest of their lives. They should be fairly
4 compensated for their suffering. Without fair
5 compensation, a terrible financial burden is imposed
6 on their families.

7 Those who would limit compensation for
8 life altering injuries say that malpractice victims
9 would be compensated for not being able to work,
10 meaning they would be compensated for their economic
11 loss.

12 Well, I didn't have any significant
13 economic loss. I lost wages of approximately
14 \$8,000, and my hospital expenses of approximately
15 48,000 were covered by my insurance company.

16 My disfigurement from medical negligence
17 is almost entirely noneconomic. As you discuss and
18 debate this issue, I urge you to remember that no
19 two people, no two injuries, no two personal
20 situations are identical. It's unfair to suggest
21 that all victims should be limited to the same one
22 size fits all, arbitrary cap that benefits the

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1 insurance industry at the expense of patients.

2 Victims deserve to have their cases
3 decided by a jury that listens to the facts of their
4 individual case and makes a determination of what is
5 fair compensation based on the facts of that case.
6 One size does not fit all.

7 I could never have predicted or imagined
8 in my worst nightmare that I would end up having
9 both of my breasts removed needlessly because of a
10 medical error. No one plans on being a victim of
11 medical malpractice, but it happened.

12 And now proposals are being discussed
13 that would further hurt people like me, all for the
14 sake of helping the insurance industry.

15 I'm not asking for sympathy. What
16 happened to me can happen to you or to someone you
17 love. Maybe when it does you'll understand why I
18 have to share my story.

19 The rights of every injured patient in
20 America are at stake. Limiting victims'
21 compensation in malpractice cases puts the interests
22 of the insurance industry ahead of patients who have

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1 been hurt, who have suffered life altering injuries
2 like loss of limbs, blindness, brain damage, or loss
3 of a child, spouse or parent among many others.

4 Instead of taking compensation away from
5 people who have been hurt and putting it in the
6 pockets of the insurance industry, we should look
7 for ways to improve the quality of health care in
8 our country to reduce preventable medical errors
9 that cost me my breasts, part of my sexuality, part
10 of who I am as a woman.

11 Medical malpractice kills as many as
12 98,000 people each year, and it permanently injures
13 hundreds of thousands of others. We must make
14 doctors, hospitals, HMOs, drug companies and health
15 insurers more accountable to patients. A good start
16 would be to discipline health care providers who
17 repeatedly commit malpractice.

18 We should make the track records of
19 individual health care providers available to the
20 general public instead of protecting bad doctors at
21 the expense of patients.

22 Limiting victims' compensation will not

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1 make health care safer or more affordable. All it
2 will do is add to the burden of people whose lives
3 have already been shattered by medical error. Every
4 patient should say no to legislation that does not
5 put patients first.

6 I urge you to do the same.

7 Thank you for your time.

8 MR. SCOTT: Thank you, Ms. McDougal.

9 It's those kinds of stories that we're
10 going to hear over and over again today and the
11 devastating effect that some of these proposals will
12 have on victims of malpractice. So I thank you, Ms.
13 McDougal for sharing your story with us.

14 Our next witness will be Kim Tutt of
15 Texas, who had surgery to remove another incorrect
16 diagnosis.

17 Ms. Tutt.

18 MS. TUTT: Thank you.

19 My name is Kim Tutt, and I'm from Tyler,
20 Texas. I'm a 36 year old married homemaker with two
21 young sons.

22 When I was 34 years old, I was told by

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1 my doctor that I had small cell neuroendocrine
2 carcinoma, a fatal form of cancer. My doctor told
3 me I was going to die.

4 I was forced to say goodbye to my
5 friends and family and to tell my little boys that I
6 wasn't going to be there to watch them grow up.

7 I drafted a will and tried to accept my
8 fate. My cancer doctors told me that if I underwent
9 a radical surgery, it would buy a little time, maybe
10 six months if I was lucky.

11 I had two small boys to think of. Any
12 time I could gain to spend with them was worth the
13 pain and expense. So I underwent five very painful
14 radical procedures, and I have a few more to go.

15 My lower jaw and teeth were removed, and
16 my face was reconstructed with the bone taken from
17 my lower leg. You can imagine the shock I felt when
18 my surgeon called me into his office and told me
19 that there had been a pathology mistake, and that I
20 did not then nor did I ever have cancer.

21 All of my pain and suffering was
22 completely preventable.

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1 You can also imagine the rage I felt
2 when I found out that all of the original
3 pathologist would have had to do was competently
4 double check his pathology records to see whether
5 there had been an opportunity for a mistake and then
6 perform a couple relatively simple DNA type tests on
7 the cells from my slides.

8 I later found out that this type of
9 cancer is extremely rare in young, healthy women,
10 and further, my doctor knew this, and at least per
11 his subsequent testimony, suspected a cross-
12 contamination or problem of some sort. Rather than
13 check is very own limited business records for other
14 possibly cancer patients he may have had in and
15 around the time my specimen was received, prepared,
16 and evaluated, he asked his receptionist to look
17 over his records and let him know what she found.

18 You can further imagine my disgust when
19 I found out that President George W. Bush is
20 desperately trying to limit the ability of people
21 like me to hold responsible those who have harmed us
22 and to obtain a complete recovery from them for our

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1 mental anguish, pain, suffering, and physical
2 impairment.

3 Even though I couldn't be there for my
4 family physically when I was healing and I am left
5 to deal with the attendant emotional scars every day
6 for the rest of my life, President Bush's plan to
7 limit non-economic damages to a \$250,000 maximum
8 will likely leave a jury of my peers unable to award
9 damages in excess of that amount for patients like
10 me because I have chosen to be a homemaker and do
11 not seek a direct contribution to my family's
12 income.

13 Since the pathology and his now practice
14 liability insurance carrier hotly contested the
15 pathologist's liability in the matter, I was forced
16 to obtain trial counsel to represent my interests.
17 If I live to be 75 years old and assuming my
18 attorneys receive their 30 percent of my recovery
19 for their services, that would leave me less than
20 \$12 per day for my damages.

21 Something is wrong with this picture.
22 The real truth is that the cap on non-economic

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1 damages is ultimately a complete bar for most
2 victims of medical malpractice. It is no secret
3 that greedy insurance characters -- carriers --
4 sorry. That was mistake -- carriers --

5 (Laughter.)

6 MS. TUTT: -- fight most, if not all, of
7 the medical malpractice claims they get. Why?
8 Because it is often a very effective deterrent to
9 the claim ever being pursued in the first place.

10 Under President Bush's plan, most
11 attorneys will no longer be able to accept
12 representation of these type of cases on a
13 contingency basis. Why? The cost with the
14 insurance carriers will and often does exceed the
15 proposed \$250,000 maximum.

16 Simply put, if attorneys cannot recover
17 compensation for their hours of complex and economic
18 investment in experts, et cetera, to build a
19 plaintiff's case, they quite honestly cannot
20 economically justify taking these type of cases.

21 Where does that leave the victim of
22 these avoidable mistakes? Helpless unless they can

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1 afford to pay as they go for legal services on their
2 case.

3 I am a conservative Republican for
4 Texas. I voted for Bush both as governor and as
5 President. I'm here to tell you that medical
6 malpractice can happen to anyone. It's not only the
7 liberal Democrats who are harmed and file suit, but
8 conservative Republicans, too.

9 Regardless of your political position, I
10 ask you to put yourself in my shoes. Would you
11 accept the experiences that I have endured and
12 continue to endure for \$12 a day? I really do not
13 think you or anyone else would.

14 I invite any doctor or any politician
15 that wants to limit damage awards to come and look
16 me in the eye and tell me that the pain I've
17 suffered and will continue to suffer is only worth
18 \$12 a day for the rest of my life, and if they can't
19 do that, then they have no business preventing the
20 next person who is harmed as badly as I have been
21 from recovering a just amount either.

22 MR. SCOTT: Thank you very much, Ms.

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1 Tutt.

2 And I think both of the last two
3 witnesses have shown how devastating the \$250,000
4 cap can be. If someone has huge lost wages, they
5 can be compensated in the millions of dollars.
6 However, those who do not have the economic damages
7 would be limited in both cases to \$250,000.

8 Our next witness is Kathy Olsen of
9 California. Kathy Olsen of California is going to
10 speak about her 12 year old son.

11 MS. OLSEN: Thank you very much for
12 having this committee meeting. I appreciate the
13 fact that Congressmen here are willing to hear from
14 true victims and patients of medical negligence.

15 Eleven years ago our son Stephen was
16 made blind and brain damaged by the medical
17 malpractice. Then he became a victim for the second
18 time.

19 In California the law is known as MICRA,
20 Medical Injury Compensation Reform Act of 1975. We
21 soon learned that justice, which was supposed to be
22 blind, was instead rendering our son literally

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1 blind.

2 Last month the President said if you're
3 looking for a solution, look at the states, the
4 states which have done a good job helping their
5 patients out. California is one example.

6 Mr. President, if you think California
7 law is an example for the nation, I say look at
8 Stephen Olsen. Stephen was two years old when he
9 fell on a twig in the woods which penetrated the
10 sinus area. He was operated on the same day and
11 released.

12 When he began to show signs of fever and
13 lethargy, we took him back to the hospital. He was
14 admitted after the third medical visit. We asked
15 doctors to scan Stephen. He was rubbing his
16 forehead.

17 We were told by them that a scan was not
18 necessary. The scan which we asked for, which the
19 President said last month in Pennsylvania was
20 defensive medicine, it would have cost \$800 and
21 would have detected the brain abscess that
22 eventually injured my son's brain.

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1 To the President and his supporters, my
2 son could have used defensive medicine, as he
3 criticized, for it was undisputed in our case that
4 that Stephen, had he received the \$800 scan as we
5 requested, would have been perfectly normal today.

6 Mr. President, you still think defensive
7 medicine is bad medicine. I say look at Stephen
8 Olsen.

9 Stephen's injuries, which left him
10 blind, brain damaged, was caused by repeated
11 negligent acts and incompetence. "Repeated
12 negligent acts and incompetence," those aren't my
13 words. Those are the words of the California
14 Medical Board.

15 At trial, the jury of our peers had an
16 opportunity to hear both sides and decided because
17 of the severity of his injury and the extreme
18 negligence of the malpractice that Stephen's pain
19 and suffering should be worth \$7 million. As soon
20 as the jury left, the defendants asked the judge to
21 lower the award to the one size fits all \$250,000
22 cap.

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1 Upon hearing this, the jury foreman,
2 which he wrote in the paper, expressed his outrage.

3 Last month the President said the system
4 looks like a giant lottery, and to that I say my son
5 never purchased a ticket for this lottery, and if
6 you think malpractice victims are somehow winners in
7 some kind of lottery, I say look at Stephen Olsen.

8 So the truth is that California's
9 malpractice law has failed innocent victims,
10 consumers, and taxpayers. Under this law people are
11 victimized twice, once by the wrongdoer and again by
12 the laws that deny them their right to hold the
13 wrongdoer accountable.

14 And this law is regressive by hurting
15 the most seriously injured victims, those who are
16 permanently and catastrophically injured by medical
17 negligence. And who is doing the pain and
18 suffering? In California, and now proposed
19 nationwide, no matter how old you are or how
20 disabled you become or how catastrophic your
21 injuries are, there is a one size fits all limit on
22 your pain and suffering.

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1 For my son Stephen who became blind,
2 brain damaged, acquired cerebral palsy and suffers
3 from many severe disabilities, that works out to be
4 \$4,000 a year for his expected lifetime. This
5 amount to us is not fair. Is it really fair? Is it
6 moral?

7 My answer is no. We are an example, not
8 the issue, but many of these people are here today
9 because not only was Stephen Olsen injured. There
10 are many like Stephen who never get the opportunity
11 to have their day in court. He was one of the lucky
12 ones.

13 We appreciate your time, and thank you
14 very much.

15 MR. WEINER: Mr. Scott, if I could,
16 first I want to thank Ms. Olsen for telling her
17 story.

18 One thing we have already seen in the
19 three cases, it demonstrates a little bit of the
20 problem with this bill, is that in addition to
21 showing contempt for victims and the obvious overt
22 contempt for attorneys, this legislation shows

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1 contempt for juries. It shows contempt for the idea
2 that 12 or six or nine or eight of our fellow
3 citizens have the intelligence to get together in a
4 courtroom, listen to a complex trial, and draw a
5 conclusion for themselves.

6 You know, we have a tendency around here
7 to believe that we have all of the answers, and I
8 always hear some of my colleagues talk about
9 returning power to the people, returning power to
10 the states, returning power to families. If there
11 was ever a power grab, if there was ever an attempt
12 to show disdain for the average, for the
13 knowledgeable, for the regular America, this is it
14 because I have must more confidence in Kathy Olsen,
15 a jury of Kathy Olsen's peers than I do in a group
16 of insurance lobbyists on Capitol Hill.

17 MS. CLAYBROOK: Mr. Chairman, if a jury
18 can decide the death penalty, why can't they decide
19 an amount of money for an injured victim?

20 MR. SCOTT: Thank you very much.

21 This also shows the value of the
22 Patient's Bill of Rights. When an HMO decides that

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1 a test will not be given and you have results such
2 as this, the HMO ought to share some of the
3 responsibility. Under present law, they have no
4 responsibility for those decisions.

5 Dylan and Christine Malone of Washington
6 State.

7 MR. MALONE: Thank you.

8 I'm Dylan Malone from Everett,
9 Washington, and my son Ian was horribly and
10 irreversibly injured due to some medical errors that
11 were made at his birth, and I want you to know that
12 not all medical malpractice errors are simple
13 errors.

14 Some of the stories that you can hear
15 from the people in this room describe disgusting,
16 almost criminal behavior on the part of these
17 doctors. It's a tiny minority of the health care
18 profession, but we have to deal with them.

19 In our case, an obstetrician used a drug
20 to induce labor that should never be used for
21 inducing labor. It's an ulcer medication. It
22 caused powerful contractions that instead of lasting

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1 for seconds went on for four and five minutes and
2 prevented the blood from flowing in my laboring
3 wife's womb. So my son was suffocating. And about
4 20 minutes before he was born, his heart just
5 completely stopped beating.

6 The people in the birth center knew they
7 had lost the heart beat. You can hear them. The
8 birth was videotaped, and you can hear them
9 discussing amongst themselves, "I can't get a heart
10 beat. Can you find one?"

11 "No, not really."

12 But they chart on their chart, "Good,
13 strong fetal heart tones every five minutes."

14 My son is born. He's not even blue, but
15 he has a grayish pallor to him, and he's not
16 breathing. He has no heart beat at all, of course.
17 They write he has an Apgar of 5, which means that
18 he's breathing and has some color.

19 Again, you can see all of this on the
20 videotape.

21 Medics arrive. They tell the medics
22 that -- the medics say, "How long has this baby been

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1 down?"

2 He's been down for four minutes. It had
3 been nine minutes, and just lie after lie.

4 They take my son to the intensive care
5 unit at Children's Hospital. The doctors at
6 Children's Hospital ask for a report of what
7 happened to this baby. They hear that they
8 supposedly had good heart tones, and they told us,
9 "You know, you'll be taking your son home. You'll
10 be breast feeding by Monday. He's going to be all
11 right."

12 And it took weeks before the doctors
13 looked at the video of his birth and realized that
14 they had been lied to, and there were treatments and
15 therapies they could have tried in the intensive
16 care unit that they forewent because they didn't
17 think they had a serious injury.

18 These are outrageous cases. So we filed
19 a complaint with our state's Department of Health,
20 and the Department of Health took two years to take
21 any action at all, and they found that the Birth
22 Center was responsible for the death of one child in

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1 another case and then the severe injuries to my son.

2 What do they do? A \$3,000 fine, and
3 they had to take a CPR course. They're still
4 practicing.

5 What this bill is doing, I've heard no
6 proposal in the Capitol that will lower the
7 incidence of malpractice and make medical review
8 boards and departments of health do a better job of
9 enforcing their law and protecting their citizens.
10 Instead I just hear a drive to shift the burden away
11 from the insurance companies and onto the taxpayers.

12 We were told when we brought our poor,
13 broken son home from the hospital and he couldn't
14 swallow so that he was being fed through a tube in
15 his intestines, and he was having seizures dozens of
16 times a day; we had to suction out his airway with a
17 machine so that he wouldn't suffocate on his own
18 saliva, and we were told -- we went to our HMO and
19 said, "What should we do?" They didn't want to
20 provide nursing care.

21 They said, "Put him up for adoption, you
22 know, and the state will provide everything he

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1 needs."

2 That's where the burden is going to
3 land. As you erode the rights on our side of the
4 table -- and I'm very concerned that this is
5 becoming in the eyes of the press a fight between
6 doctors and lawyers, and you know, there is another
7 seat that table, and that is the victims, and they
8 need a voice in this argument.

9 And I think if you want to lower the
10 cost of medical malpractice insurance, you need to
11 take the outrageous stories like mine and see that
12 those people are taken out of the practice, and
13 you'll find a much healthier way to reform the
14 system.

15 Thank you.

16 MR. SCOTT: Thank you, Dylan for your
17 testimony. It shows what can happen, the kinds of
18 outrageous behavior that's going on and what this
19 bill would do to limit your resource.

20 Richard Flagg of New Jersey.

21 MR. FLAGG: Thank you for allowing this
22 forum, and thank you to Public Citizen and the

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1 Center for Justice and Democracy for caring.

2 My name is Richard Flagg, and I'm 62
3 years old. I reside in Jersey City, New Jersey.
4 I'm a veteran from Vietnam, a father, and a victim
5 of malpractice.

6 In September 2000, I was admitted to the
7 hospital in New Jersey to have a simple, small tumor
8 from my left lung. At the time it was considered to
9 be optional surgery, and the only reason it was
10 there was because I was having bleeding problems if
11 I ever had a lung infection.

12 So I went in with that thought in mind,
13 and the doctors paid no attention to protocol. The
14 hospital paid no attention to protocol. They
15 wheeled me into the operating room without asking
16 why I was there, what I was going to be operated on
17 for, and as a consequence, the tumor that was in my
18 left lung is still in my left lung, and three
19 quarters of my right lung is gone, the healthy lung.

20 I'm now confined 24 hours a day, seven
21 days a week to an oxygen hose. Two years ago I was
22 a barge captain in the United States Merchant

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1 Marines. I could walk at a fast pace from bow to
2 stern of a 300 foot ship in a very short time. I
3 was strong. I was in good shape.

4 Today I'm a physical wreck. I'm an
5 emotional wreck. All of this was done to me, but is
6 that why we're here?

7 That's part of it. The biggest part of
8 it is what's happening today. The tail is
9 definitely wagging the dog. The insurance companies
10 are being allowed to put out misinformation to talk
11 about things that aren't true. They're allowed to
12 overcharge.

13 Now, I'm somewhat of an amateur
14 historian, and I do have a degree in history, as
15 well as one in biology and a minor in chemistry, and
16 it seems to me that back in 1789 when the
17 Constitution of the United States was written our
18 forefathers had in mind one thing. Justice in this
19 country was to be decided by a jury of our peers.

20 This is not true today. It is in
21 criminal cases. It is in murders. It is in
22 robberies. It isn't in medical malpractice. If Mr.

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1 Bush has his way and the states that already have
2 these caps on certain parts of tort reform, this is
3 what we can look forward to getting worse and worse.

4 I made a quote on a forum on a Web site
5 last week in New Jersey. Someone asked me how do
6 you feel about what's happening with tort reform. I
7 answered it very simply. Once you start taking a
8 person's individual rights and freedoms of our
9 American citizens away, where does it stop? It
10 doesn't, and I referenced Adolf Hitler, Idi Amin,
11 Saddam Hussein, and so forth down the line.

12 I received 125 answers, all of them
13 saying thank you; we didn't know.

14 There is our problem today. It's mostly
15 misinformation or lack of information.

16 I would like to see people in this room,
17 each one become ambassadors to this. Talk as hard
18 and as long as you can to stop what's happened.
19 That's what we need more than anything else.

20 Thank you very much.

21 MR. SCOTT: Thank you very much, Mr.
22 Flagg, for your testimony.

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1 And we've been joined by Jan Schakowsky,
2 a member of the House from Illinois, and, Jan, do
3 you have a statement that you would like to make?

4 MS. SCHAKOWSKY: I do. I was at a
5 hearing yesterday in Pennsylvania of the Oversight
6 and Investigations Subcommittee of the Commerce
7 Committee, where we heard testimony from health care
8 providers and also from a remarkable young woman,
9 Heather Lewinski, who was a victim of malpractice.

10 And there is such an unreality about all
11 of this. We know we have a crisis. The crisis is
12 that more people are dying of malpractice than of
13 breast cancer or AIDS or automobile accidents. So
14 there is a crisis.

15 But what are we focusing on? This
16 administration and the Republican led Congress is
17 focusing on an crisis in insurance rates. Okay.
18 Let's accept that. We're looking at insurance
19 rates, and some may say that of certain specialties
20 those rates are too high. Let's accept that, that
21 some doctors are finding that they're unable to
22 continue practicing because they have such high

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1 insurance rates.

2 But then there is this incredible leap
3 of logic that rather than focus on the insurance
4 industry, let's focus on the victims of malpractice.
5 I mean, it's just amazing to me that that would be
6 the tunnel vision of the industry and accepted by
7 this administration. It's a non sequitur in some
8 ways.

9 In fact, we had testimony yesterday from
10 the head of the nursing home association in
11 Pennsylvania, and he pointed out that \$44 million
12 had been collected from the nursing homes, and only
13 \$2 million had been paid out. And guess what.

14 I said to him, "Okay. So \$44 million
15 has been collected by an insurance company. Why is
16 it you're going after the two million? You know,
17 that doesn't make any sense. This is not a smart
18 strategy. Maybe you ought to be asking why is it
19 that the insurance companies are collecting so much
20 money."

21 And I put into the record the Public
22 Citizen report that showed that we have so many

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1 cases of, incidents of malpractice in this country.
2 Why is it that when you look at the number of
3 lawsuits it's so much less? Maybe one out of six or
4 one out of eight. So where is this mad rush to sue?

5 And then the nerve to call these awards
6 or settlements jackpots, as I walked in the door
7 somewhat late. How dare they say to the families of
8 victims of malpractice, "Boy, you've hit the
9 jackpot"? And we're hearing testimony here today.

10 When you're not even sure if an award or
11 the cost of covering health care is given, what if
12 those costs exceed that? Can you go back and ask
13 for more money to make sure that those costs are
14 covered? You're not even certain that that's going
15 to happen.

16 And they talk about these huge dollar
17 signs and never talk about how they've been knocked
18 down, what actually gets put in the bank. I was
19 talking to Heather's mother. They talk about this
20 \$3 million award. She says, "You know, we're not
21 supposed to tell how much we actually got, but
22 believe you me, we were not able to put that kind of

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1 money into the bank, and we are still suffering
2 economically from the kind of money that we had."

3 And then the nerve -- and I heard
4 Congressman Weiner say this -- to say that we're
5 going to replace politicians as decision makers with
6 a one size fits all answer of \$250,000 instead of
7 juries, juries of your peers from your community
8 that can listen to an individual case and make a
9 decision based on the actual circumstances of that
10 case.

11 And finally, let me just say this. It's
12 discriminatory. It hurts women who make less than
13 men on the dollar. It hurts children. What are
14 they worth?

15 You know, if you're driving down the
16 street drunk and you think you're going to hit
17 something and there's a school bus and a Mercedes,
18 you'd better head for that school bus. You'd better
19 head for the school bus because what are children
20 worth, after all?

21 Or a senior citizen. I mean, there's
22 this horrifying -- you know, I said to the guy from

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1 the nursing home industry, I said, "If there is ever
2 an industry crying for experience rating where you -
3 - like driving, if you're a good driver your rates
4 are lower. If you're a bad driver, your rates are
5 higher. It's the nursing home industry."

6 I said, "You know you would not allow
7 your mother to go to some of these nursing homes.
8 Why do you want to establish a system that makes it
9 easier for those bad actors to stay in business, to
10 reduce their rates?"

11 You want those people to pay the high
12 rates and you don't want to be burdened by the money
13 that has to be paid out because of these bad actors.
14 Nothing about this so-called solution makes any
15 sense, and it diverts us.

16 I come back to my original statement.
17 We have a crisis, and that crisis is in malpractice
18 around the country.

19 And I want to thank -- let me just end
20 with this -- I want to thank all of the people who
21 are here today: a mother talking about her son, a
22 man talking about how his life has been snatched

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1 from him, all of you who are here today.

2 I know -- I don't know. I can only
3 imagine, and I imagine it because you tell your
4 stories in such an eloquent way, and I am just
5 hoping.

6 The good news from yesterday was the
7 story that came out in the press was all about
8 Heather Lewinski, and I'm so pleased, and she was
9 the only one out of three panels who told her own
10 personal story, and that's what the press picked up,
11 and I'm so proud of all of you. I'm proud to sit
12 here with you as you tell your stories and commit
13 myself to you to continue to fight for equity and
14 fairness in a system that's clearly broken.

15 Thank you.

16 MR. SCOTT: Thank you, Jan.

17 And I think your statement illustrates
18 why it is important for the other party not to have
19 a hearing on the malpractice legislation, because
20 those facts would come out and totally embarrass
21 them as they run this thing through the legislative
22 process.

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1 They have refused to have a hearing.
2 They refuse to hear that testimony and those facts,
3 and they just want to rely on sound bites and
4 slogans to try to get this legislation passed.

5 Thank you very much.

6 Archie and Ariba Moore and their
7 daughter Alicia from Miami.

8 MS. MORRIS: Hi. I'm Ariba Morris from
9 Miami, Florida. I'm here with my daughter, Alicia
10 Moore, and her father, Archie.

11 Our daughter Alicia was born January
12 11, 2000 with a congenital syndrome commonly known
13 as heterotaxia syndrome of which she had numerous
14 signs and symptoms at birth. Although Alicia was
15 hospitalized at two hospitals for some 20 days for
16 surgeries, tests, and monitoring, none of her health
17 care providers checked to see if she had a
18 functional spleen.

19 She was sent home without antibiotics
20 and without warning to us as her parents that any
21 sign of infection or illness in such a child is a
22 medical emergency.

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1 On July 23rd, 2000, when Alicia was six
2 months old, she developed overwhelming sepsis as a
3 result of functional asplenia and lack of
4 antibiotics. She suffered infarctions which caused
5 her arms and legs to become gangrenous. Both legs
6 were amputated above the knee. Her left arm was
7 amputated above the wrist. Her right hand has
8 several finger stumps remaining.

9 She was hospitalized fighting for her
10 life from July until December 2000, but she pulled
11 through and will now live a normal life as a
12 quadruple amputee. Some photos of Alicia are
13 attached.

14 Alicia faces a life that will very well
15 be difficult. She faces a lifetime of plastic
16 surgical care, skin breakdowns, and infections at
17 her stump sites where she will have countless
18 prosthetic changes over her lifetime.

19 Alicia won't be able to partake in most
20 of the activities that other children, teenagers,
21 and adults experience through her lifetime. We have
22 been told that there is little question that her

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1 interpersonal relationships, emotional life, and
2 personality will certainly be affected by her
3 disabilities.

4 People stare at Alicia wherever we go.
5 We have heard that President Bush has proposed a
6 250,000 cap on the amount that victims of medical
7 malpractice, like our daughter, can recover for
8 losses other than lost wages and medical care. He
9 says that the medical malpractice system is a
10 lottery and that there are too many frivolous
11 lawsuits.

12 Our family certainly does not feel as
13 though we have won any kind of lottery. Our claims
14 are certainly not frivolous. No one can look at our
15 daughter and tell that \$250,000 would be fair
16 compensation to her for medical errors that took
17 away her hands and legs forever.

18 Many of the health care providers who
19 care for Alicia have already settled her claims for
20 pain and suffering and loss of enjoyment of her life
21 for more than \$250,000.

22 Taking away the right of a jury to

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1 decide what is fair on a case-by-case basis and
2 placing a 250,000 limit on what people with
3 catastrophic injuries can recover will not solve the
4 medical malpractice insurance crisis. It will only
5 cause more suffering to victims who have already
6 suffered enough through no fault of their own.

7 Thank you.

8 MR. SCOTT: Thank you very much, Ms.
9 Moore. Thank you for your testimony.

10 Mr. Delahunt.

11 MR. DELAHUNT: Yeah, I find it
12 interesting. I don't have a specific recollection
13 of President Bush using the term "lottery," but I
14 dare say that if he was here today and if he used
15 that term, I would hope that he would extend an
16 apology to each and every one of you today because
17 you deserve that.

18 I just wonder if anyone would trade
19 their child's sight or a healthy heart for \$250,000
20 or trade your wife's or husband's ability to walk
21 for \$250,000.

22 What the President should do is he

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1 should convene a meeting, a forum just like this in
2 the White House and sit down and listen to you, and
3 then let's see if he'll continue to pursue this
4 particular proposal.

5 MS. OLSEN: The President in speaking
6 when he was in Pennsylvania actually said, "The
7 system looks like a giant lottery." So if you're a
8 lucky winner, apparently some of us are and some of
9 us aren't, but are you really winning anything?

10 I mean even when you get to go to court,
11 you're still hurt. Why would we be doing this if we
12 thought people behind us would also suffer?

13 We need to change the system, and the
14 lottery system isn't something that we signed up
15 for, and to me and our family, it can happen to
16 anybody. My son was a minor. He didn't go in
17 claiming a political affiliation when he checked
18 into the hospital, and that's what's going to happen
19 to any person.

20 MR. DELAHUNT: Well, you know, the
21 President should stop worrying about lawyers and
22 insurance companies and physicians and doctors.

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1 First of all, we should be funding a health care
2 system so that everybody in this country receives
3 quality health care.

4 And then he should listen to you.

5 MR. SCOTT: Thank you, Bill.

6 John McCormack from Massachusetts.

7 MR. McCORMACK: Good morning. Thank
8 you for having me.

9 I want to tell you a horrendous story
10 about my daughter Taylor that died at the most
11 prestigious hospital in the world for children,
12 Children's Hospital, and I'm here today because I
13 don't want families that lived the living hell and
14 the pain and suffering that I went through.

15 I lived every parent's nightmare of
16 losing a child, and this is especially difficult
17 because our child should be alive today. Because of
18 medical errors she is not.

19 When our 13 month old daughter was
20 brought into the emergency room, we were told that
21 the shunt which was placed in her head at birth was
22 in failure. She had a hydrocephalus, which is a

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1 shunt that relieves the fluid, and it goes down into
2 her stomach, which was blocked, and it is a common
3 procedure, and you're not supposed to die from it.

4 We were then told that since the OR was
5 too busy and due to the late hour and on the
6 weekend, she was being bumped from surgery that
7 evening and would have to wait until the next
8 morning for surgery, which she did not make until
9 that morning.

10 Given her clinical presentation at the
11 time, it was grossly negligent not to have done the
12 surgery immediately. To further compound the
13 problem, she was not even placed in an intensive
14 care unit, nor was she properly monitored while she
15 awaited surgery.

16 My daughter was showing all of the signs
17 of fatal intracranial pressure which was totally
18 ignored by the nursing staff and the attending
19 resident neurosurgeon who failed to even check on my
20 daughter at all after she was placed in the room.

21 After being placed in the room, the
22 resident neurosurgeon working that evening at the

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1 hospital paged the attending neurosurgeon, who was
2 supposed to do the surgery and was on call that
3 evening. However, the attending neurosurgeon put
4 his pager on vibrate, went to sleep, and never came
5 in and did not answer the numerous pages, despite
6 the fact he had previously given an order to the
7 attending resident neurosurgeon to tap the shunt,
8 which the resident neurosurgeon did do, but the
9 shunt was dry and no fluid was obtained, which was a
10 dangerous condition.

11 After tapping the shunt, the resident
12 neurosurgeon repeatedly paged the attending
13 neurosurgeon to let him know that the shunt could
14 not be tapped, but as previously noted, the
15 attending neurosurgeon had gone into a supermarket
16 to do his shopping. Then he says he put his pager
17 on vibrate as he went into the supermarket, and then
18 went home and fell asleep, never answering any of
19 the pages from the resident neurosurgeon, and never
20 even bothering to inquire as to the results of the
21 shunt tap on my daughter's condition.

22 And they even had him scheduled to do

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1 the surgery in the morning, and nobody ever notified
2 him.

3 The resident neurosurgeon in question
4 who rendered care to my daughter that evening had a
5 limited medical license, which had expired at the
6 time he rendered such care. Yet he was left in
7 charge to call the shots.

8 The resident neurosurgeon also ordered
9 blood tests which were taken that evening which
10 showed that my daughter had critical carbon dioxide
11 levels, as well as abnormal potassium and sodium
12 levels, but nobody, including the resident
13 neurosurgeon, even bothered acquire a knowledge or
14 address these abnormal results.

15 Although ICU monitoring was needed, my
16 daughter was not placed in an intensive care unit.
17 No doctor ever examined my daughter from the time
18 she was admitted to the time she went into
19 respiratory arrest from 12:20 a.m. to 6:20 a.m.

20 The hospital could have done a bedside
21 procedure to relieve the pressure of my daughter's
22 brain, but did not even attempt.

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1 I just want to give you some examples of
2 the pain and suffering that my family endures, and
3 this is especially to the President and to the
4 medical society.

5 My daughter's last words were at two
6 o'clock in the morning, which was, "Mama," when my
7 wife was in the room when she was crying out for
8 help, and the nurse just happened to come by and
9 just gave her Tylenol and said that was
10 irritability.

11 Second of all, when the anesthesiologist
12 came in in the morning and was asking my wife
13 questions about my daughter, the heart monitor was
14 going off. My wife ask the anesthesiologist if my
15 daughter was okay. He didn't even bother looking at
16 my daughter. He just looked at the chart, looked at
17 the monitor, and said my daughter was having a slow
18 heart rate. She would be all right.

19 My wife got out of the chair and looked
20 at my daughter. My daughter was blue. She ran out
21 into the hallway to the nurse's station and told the
22 nurse that my daughter was blue. She came in and

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1 told the anesthesiologist to press the red button,
2 which was the code button. He didn't even know
3 where the code button was at.

4 Third, my daughter was in a coma for a
5 week. Now, I physically grabbed her bottom and it
6 felt like mush, and they were using all of these
7 medical terms, and I had to ask that my daughter was
8 in a coma. She was on life support, and we had a
9 meeting, and they told me my daughter had 98 percent
10 brain injury, that she wouldn't know she had a
11 father, a mother, or two brothers.

12 And that night my son -- my son plays
13 soccer, my oldest boy, and we went to his hockey
14 game, and we were putting his hockey gear in the
15 car, and I remember him saying to his mother if
16 Taylor is ever going to come home again.

17 Right then and there I had to decide.
18 It was the hardest choice of my life, that I
19 couldn't put my two boys, Jack and Steven, through
20 this ordeal. So me and my wife took her off life
21 support.

22 It was on a Friday. My daughter fought

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1 every last breath for three and a half hours, and my
2 kids came in to hold her, tell her that they loved
3 her, and I particularly remember my youngest son
4 Steven in the patient waiting area playing with toys
5 with tears coming down his eyes, and he was four at
6 the time.

7 When my daughter finally passed away, I
8 told my family to leave, and I wanted to see my
9 daughter be respected. I saw my daughter get
10 tagged, wrapped, and I carried my own daughter down
11 to the morgue myself.

12 And I apologized to her that I failed to
13 protect her and guide her, and I live that failure
14 every day of my life. And I remember the memories
15 of putting her on the slab and telling her that I'm
16 very sorry, that I'm going to fight every step of
17 the way to make things change.

18 And my two little boys are affected by
19 it every day. You know, the first day after we had
20 the funeral, my little one went back to school, and
21 right before he went to school he told his mother.
22 He goes, "Mamma, I have a great idea. I want to put

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1 a ladder up to heaven, climb up, put a Bandaid on
2 Taylor's head and bring her back."

3 And for the last two Christmases he
4 keeps on asking me. He wants to give toys back to
5 Santa to have his daughter back.

6 And my oldest son Jack keeps on asking
7 me why the doctors did this to Taylor, and I don't
8 have any reasons why.

9 So, Mr. President and the medical
10 society, you know, these are real life stories of
11 pain and suffering, and I would like for you to live
12 in my shoes for even five minutes of the day to see
13 what I go through.

14 I thank you for your opportunity, and
15 thank you.

16 MR. CONYERS: Have you ever heard of a
17 speaker John McCormack?

18 MR. MCCORMACK: A great Irish tenor and
19 a great Speaker of the House. Yes, I did.

20 MR. CONYERS: Okay.

21 MR. SCOTT: Thank you so much.

22 Sherry Keller, Conyers, Georgia.

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1 MS. KELLER: I thank you for the
2 opportunity to speak to you today. My name is
3 Sherry Keller. I am a victim of medical
4 malpractice, and I beg your consideration in my
5 story and the McConnell amendment.

6 I come here at my own risk and my own
7 best interests, but my commitment to this cause
8 commands my heart to do so with any reservation. My
9 case is still in the court system, and against
10 advice I speak. I have no other motives.

11 One week after a complete hysterectomy,
12 the staples were removed from my incision site, and
13 as the Honorable Congressman has mentioned, due to
14 health care inadequacies in the payment my surgery
15 was rushed, incompleated, and sutures were not
16 applied underneath. Then they removed the staples,
17 that night the wound oozed and the doctor called me
18 into the office the next morning.

19 She put me up on the gynobed, started to
20 clean the wound, and as she cleaned the wound, she
21 pulled on the incision site. It had not healed
22 underneath because of the lack of sutures.

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1 I opened up just like a Zip-lock bag and
2 just like I had been in surgery. The doctor then
3 said she was going to go call a wound care
4 specialist and left me laying there on that gynobed
5 alone, no nurse to come in to sit by my side,
6 nothing.

7 I was now going to take more time than
8 what she had planned because of overbooking of
9 patients in order to compensate for the low
10 insurance pay. She went and saw more patients, made
11 a phone call to her home, as well as other
12 incidentals. Time lapse, 35 minutes.

13 In the interim, I had gone into shock,
14 lost consciousness, and fell off the gynobed. As I
15 fell, my head hit the counter, damaging my spinal
16 cord from C2 through C7, a very similar injury of
17 that to Christopher Reeves and that that killed Dale
18 Earnhardt.

19 The sound incision alone has a 40
20 percent mortality rate. I was able to pull myself
21 out into the hallway in order to be found. They
22 then picked me up from the hallway, and instead of

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1 insuring my care, at this point the doctor decided
2 she needed to protect her best interests.

3 After arguing with my husband about
4 whether or not to get an ambulance, the ambulance
5 was called, but because of her direction to
6 transport only, I was not even afforded a neck
7 collar. The doctor had all of the power. Patient
8 care meant nothing.

9 She had called ahead to the ER and
10 notified them that I was on the way, and I was her
11 patient, and she would take care of it. I laid in
12 the ER for two and a half hours before she came up
13 there, dressed my wound. No other doctors saw me;
14 no other doctors took care because of the doctor
15 protocol, not to bridge that gap of taking somebody
16 else's patient. Patient care meant nothing.

17 I was sent home with a broken neck. My
18 personal story is a prime example of the God-like
19 power given to physicians in every phase of patient
20 care. In today's dollar society, the Hippocratic
21 oath means nothing. Patient care is a remote
22 concept that can only be brought back to the

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1 forefront by physician accountability with fair and
2 just compensation to patients.

3 Doctors are meticulously trained to cure
4 us, keep us alive, improve our quality of life.
5 They take a solemn oath to do no harm. It is a
6 noble profession and a calling of sorts. We put our
7 trust in doctors like no other profession.

8 They are human. Mistakes are made,
9 sometimes honest mistakes and sometimes through
10 blatant incompetencies, but mistakes cost lives.
11 They create medical nightmares and destroy the
12 quality of life of their victims and their victims'
13 families.

14 I am never to have the freedom a healthy
15 body has again; never able to have the complete use
16 of my arms for the simplest of tasks; never to walk
17 again holding a child's hand, exploring and seeing
18 the splendor of this great country; and even a
19 simple trip to the bathroom now gone forever, every
20 day, each and every day for the rest of my life.

21 We as victims endure pain and suffering
22 24 hours a day both in the physical pain that no

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1 amount of medicine can take away. Suffering comes
2 in sleep and in dreams of one's physical state.

3 I gave my life to raising and doing for
4 my family. Legally the only compensation I would
5 receive is from the pain and suffering award. How
6 much is a spinal cord worth?

7 The insurance companies would have you
8 believe that the rise in jury awards is the cause of
9 the physician's rising insurance costs. Looking at
10 the statistics and figures, we know this not to be
11 true.

12 Given California as an example where
13 this cap has been in place, the physician's
14 insurance rates continue to rise at above the
15 national normal for states in which there is no cap.

16 It's an outrage that victims of medical
17 malpractice are to be trivialized for the profit
18 margin of big business. In the shadow of Enron
19 where the President has called for accountability of
20 all responsible, how can physicians not be held
21 accountable in the magnitude of which they hold to
22 devastate lives?

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1 What is considered large jury awards
2 should be an indicator that our peers agree that the
3 physicians be held accountable. It is what the
4 public demands.

5 Please, my chair alone is \$50,000. The
6 equipment that I need in order to be able to just go
7 to the grocery store is \$60,000. One would have you
8 to believe that pain and suffering is a dollar
9 amount, but the fact is it goes for the excessive
10 medical needs I now have that insurance will not
11 cover.

12 Insurance companies would like you to
13 believe that fair and just compensation to victims
14 raises the rates and stop frivolous suits and keep
15 malpractice laws low. This is not true.

16 Anyway, it is an outrage that victims of
17 malpractice are to be trivialized. I lost my place.
18 I'm sorry.

19 Anyway, my personal story shows the
20 power of the doctors over our lives in every aspect.
21 There are good physicians out there. This is not to
22 minimize or criticize all physicians. It was also a

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1 physician that saved my neck and gave me the
2 function that I do have.

3 This is to hold accountable those
4 physicians who do not put patient care above all
5 else. Please, this cannot happen. Caps cannot be
6 allowed, not in a great society like ours that bases
7 itself on fairness and equality to all.

8 I thank you for listening to my story
9 and the opportunity to speak.

10 MR. SCOTT: Thank you very much, Ms.
11 Keller. Your testimony and the testimony of others
12 has indicated how bizarre a one size fits all, and
13 also with the various people involved in your
14 situation, a joint and several liability where you
15 have to go and find each portion of each negligence,
16 how much of it was the doctor, how much of it was
17 the ambulance people, how much of it was the next
18 hospital, and if you miss allocate you just lose
19 that portion of the little bit of one size fits all.

20 This is not a fair situation, and
21 hopefully we'll be able to tell the public why we
22 are opposing this legislation.

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1 Linda Wolf, Manchester, New Hampshire.

2 MS. WOLF: Hi. I'm Linda Wolf, and I'm
3 from Manchester, New Hampshire.

4 I guess my story is just a little
5 different in that my husband was a victim of medical
6 negligence and actually died from the medical
7 negligence. He was also himself a surgeon.

8 It has been very difficult for me. He
9 lived his whole life wanting to become a doctor;
10 grew up in rural Oklahoma; spent 20 years of his
11 life pursuing his dream of becoming a doctor; Board
12 certified plastic and reconstructive surgeon, with a
13 specialty in hand surgery.

14 It's interesting because we used to
15 laugh at him because this appeared in his local
16 paper one time because he used to volunteer at the
17 hospital when he was a young boy, and he's pointing
18 to -- I don't know if you can see -- it says
19 "Doctors Only."

20 So he just always had wanted to be a
21 healer, and he was a very good doctor, and I can
22 honestly say you know it's very hard for me because

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1 I am very torn. There are very good physicians out
2 there. He got very bad care. No one advocated for
3 him, and I'll just tell you a brief how I feel and
4 what kind of transpired.

5 The year was really full of joy for my
6 family. My oldest daughter had graduated from
7 college. My son was a freshman at Middlebury
8 College, and my youngest was 16 years old and a
9 junior in high school, and we were all excited to
10 kind of have some summertime fun. It was May and we
11 were anticipating my son coming home from college.

12 My husband, John Wolf, a Board certified
13 plastic and reconstructive surgeon with a specialty
14 in hand surgery, decided to have some elective
15 surgery, a laproscopic procedure to take out his
16 gall bladder. He had had some symptoms and had had
17 a test that revealed that his gall bladder wasn't
18 functioning, and it was kind of a, you know, "I'm
19 50. Let's take care of" -- I kind of encouraged
20 him. Let's look at yourself. Let's look at your
21 health. You're 50 years old. I want to spend a
22 lifetime with you. Let's not -- because he was

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1 always kind of working.

2 So he had his procedure done at an out-
3 patient facility. It was there that the surgeon
4 decided he needed some equipment, and instead of
5 waiting, he improvised of which I knew nothing
6 about at the time.

7 My husband was in serious pain, but no
8 one could tell me what was wrong. He ended up
9 transported to a local hospital by ambulance where
10 within 24 hours he became extremely ill. I did not
11 know at the time he was in renal failure and had two
12 collapsed lungs.

13 Not one doctor came to the hospital when
14 he became extremely ill. He sat on the ward

15 The next day I was told it was really
16 nothing. He would be out of the hospital in a
17 couple of days. Slight pancreatitis they told me.

18 A few hours later -- you know, I went
19 home, relieved because I had been very upset about
20 the whole thing, not really being able to put
21 anything together, begging nurses, "Is this normal?
22 He's supposed to be home and back to work in two

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1 days."

2 You know, I went home, went to start
3 eating my nachos, and his internist called and said
4 that he had finally come to visit him after 50-odd
5 hours and this was a surgical problem.

6 I rushed to the hospital, and he had a
7 second surgery which was done to repair the
8 perforated bowel that happened in the first surgery,
9 and his medical status at that point had
10 deteriorated so much from the peritonitis due to the
11 inflicted injury that they actually did surgery on
12 him without any anesthesia.

13 At one point the surgeon had said to me,
14 "Oh, he's out of the woods," and the next minute he
15 finally told me that he was critical, but that he
16 was getting better.

17 And as the week progressed he wasn't
18 waking up. He had been intubated, and I couldn't
19 talk to him. I really couldn't get a sense of what
20 was going on. He was very much out of it, and so I
21 never really knew what was going on.

22 And come to find out he was never

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1 better. He passed away at a Boston hospital, and
2 that is where some of the story started to unfold.
3 I was continually manipulated by the medical
4 community that took care of him, and looking back I
5 realize they were covering probably for the surgeon
6 that had done the harm.

7 To this day I'm somewhat horrified that
8 no one advocated for him, not a nurse, not a consult
9 doctor. On a Friday night not one doctor came in to
10 visit him when he was deteriorating quickly, and
11 there were a few phone calls, you know, a few
12 monitoring of his IVs or whatever, but not one
13 person came into the hospital to actually find out
14 what was going on.

15 Sometimes I wonder if it wasn't Friday,
16 if it wasn't Friday night, if it was Wednesday,
17 would they have come in?

18 John Wolf had everything to live for.
19 He graduated from Dartmouth Medical School, a dream
20 he had had since he was a very young boy. He had
21 worked his way through college, did a residency at
22 Brown University in both general and plastic

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1 surgery. He fellowship was in hand and
2 microvascular surgery at Harvard.

3 He worked his entire life. He was an
4 outstanding and caring physician. You know, he was
5 never malpracticed in 25 years, and sometimes I
6 think, well, his specialty was such that he was a
7 plastic and reconstructive and hand surgeon, but we
8 were really poor, and we had three young children.
9 He did a lot of moonlighting in emergency room
10 medicine. So he did a lot of working in very high
11 trauma areas, and there was never one suit.

12 Yes, he did pay high premiums, and
13 interestingly enough I can actually follow it
14 because I worked in his office, and you know, in
15 1986 they were way out of sight. Well, for his
16 specialty I thought at the time way out of sight,
17 \$40,000.

18 We had no money. I mean, we had to
19 borrow money to start his practice, but you know,
20 they started to come down. I never really analyzed
21 what that was all about. You know, we were just
22 happy the bills were less, you know.

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1 To this day, and it's really hard for me
2 to think about all of the experiences our children
3 will have that he will not be able to share in and
4 enjoy. He has already missed my daughter's high
5 school graduation, the first day of college, my
6 son's first college varsity soccer game, his 21st
7 birthday. We were celebrating, but it was still sad
8 without his dad. His admittance to Johns Hopkins
9 Medical School.

10 All of the joys of our lives will be
11 laden with sadness without the presence of a
12 loving and caring father and husband, and he did
13 constantly remind me that peer review is not
14 happening. Peer review is not happening.

15 And my feeling is in my situation the
16 insurance got really muddled because, lo and behold,
17 I feel like the IOM that in many ways it was a whole
18 system breakdown. If one person had come forward,
19 the statistics are he would have been out of the
20 hospital in seven days. The injury would be
21 repaired. This wouldn't have been an issue. This
22 was a known complication that he should have looked

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1 at. He knew he didn't way for the equipment that
2 blows back the bowel.

3 But up and above that, not one nurse
4 advocated. He was not in ICU. They let him
5 deteriorate just sitting on the ward, and you know,
6 in my situation I settled. I can't talk about my
7 settlement.

8 I have not yet pursued my Medical Board,
9 have to hire an attorney to do that, and in my
10 situation the insurance company went bankrupt, the
11 carrier. So, therefore, if my attorney had not put
12 pain and suffering in there, I would have gotten
13 whatever the coverage, and I'm not a lawyer. I
14 don't really know what the specifics are, but New
15 Hampshire had to come to bat and say, "We'll cover
16 up to a certain amount," which was very little.

17 So in that sense I did get pain and
18 suffering. I never got his lost wages, what equaled
19 his lost wages because it just wasn't going to
20 happen.

21 So, you know, there are good doctors out
22 there, but it does happen, and even my case doctors

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1 have said -- and I've heard this by way of the
2 grapevine of other doctors -- that this is a
3 frivolous case; that this, in fact, is a frivolous
4 case.

5 And I would just like someone to tell me
6 what is the definition of frivolous. I really just
7 don't understand.

8 Thank you.

9 MR. SCOTT: Thank you, Ms. Wolf.

10 You know, the thing that's so
11 distressing with this is if this could happen to a
12 surgeon --

13 MS. WOLF: Correct.

14 MR. SCOTT: -- you know it could happen
15 to anybody.

16 Bill.

17 MR. DELAHUNT: You know, you used the
18 term, Ms. Wolf, you know, of peer review, and as
19 Congressman Scott just indicated, I mean, you are at
20 least familiar with the practice of medicine.

21 MS. WOLF: I am, very much so.

22 MR. DELAHUNT: And as he just suggested,

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1 and I think that this is something that really has
2 to be addressed, for those of us going into a
3 hospital or even going into a doctor's office is an
4 occasion for an accelerated pulse. It's something
5 that's foreign. It's something that's intimidating.

6 And to have no advocate, and I wonder if
7 during the course of this session of Congress we
8 ought to talk about the need in hospital settings
9 for someone there with the appropriate medical skill
10 and talent and background to advocate, whose sole
11 exclusive role ought to be an advocate for each
12 patient not to provide treatment, but to advocate;
13 to navigate that patient through because, as you
14 indicate, there are a lot of good physicians who are
15 moonlighting, who have limited time.

16 You know, I have a memory of hiring
17 private nurses for my mother because when I rang the
18 bell it was a long time before a nurse responded in
19 a hospital setting, and I wasn't blaming the nurse
20 because there was simply too few nurses on the floor
21 because of an under funded health care system.

22 And that is what this is about as well

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1 as malpractice.

2 MR. SCOTT: That's right. Thank you,
3 Bill.

4 Justin Mattes, Englewood Cliffs, New
5 Jersey.

6 MR. RODRIGUEZ: Good morning. My name
7 is Frank Rodriguez, and I'm honored to call Justin
8 both my friend and a client. I'm here to introduce
9 him.

10 I was his lawyer. I'm introducing him
11 because he has such difficulty speaking and to
12 explain to you quickly what happened to him because
13 he has such difficulty talking, and I will also
14 translate what he says to you. He will speak to you
15 in his own words.

16 We come from New Jersey. There are a
17 lot of us here from that state, where the entire
18 citizenry has been subjected to medical terrorism
19 thanks to a bunch of thugs, otherwise known as the
20 New Jersey Medical Society, that have conned and
21 coerced their members into going on strike.

22 Justin was born in 1978. He has

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1 cerebral palsy for something the obstetricians and
2 gynecologists would tell you does not happen because
3 of an obstetrician's malpractice at the time of
4 birth, something you've already heard several
5 parents talk about this morning.

6 Justin came to us in 1998 to file a
7 lawsuit. His parents for many legitimate reasons
8 decided not to sue. In our state, the Supreme Court
9 of New Jersey has decided that the two year statute
10 of limitations for children runs from the time they
11 become an adult. So they have 18 plus two. They
12 have 20 years to file a lawsuit because in case your
13 parents, for good or bad reasons, decided that they
14 don't want to pursue a lawsuit. Your child should
15 have some independent rights of their own to pursue
16 a suit on their own.

17 Justin was born in 1978. He was a
18 breech delivery. He was the first born for his
19 mother and father. In 1978, as it is today, such a
20 child should not go through labor. Such a mother
21 with that kind of pregnancy should have Caesarean
22 section because of the great risk that the cord, the

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1 umbilical cord can prolapse. In other words, it
2 passes through the cervix and then becomes
3 compressed, cutting off all blood and oxygen to the
4 baby.

5 In fact, Justin's mom's labor was
6 allowed to progress. Justin's cord did prolapse.
7 The end result is that Justin was born 40 minutes
8 later by emergency Caesarean section. It took them
9 40 minutes to get to that point.

10 Without a heart beat, he had to be
11 resuscitated. He had seizures the next day, and
12 unlike some of the children of some of the families
13 that you see here today, he is one of the lucky
14 ones. His mind is intact, although his body is a
15 disaster and he cannot control it and he has to have
16 help dressing himself and eating, and his limitation
17 in work is extreme. When he does work, he actually
18 works for his local paper.

19 That is his situation, and now please
20 hear from him. This is Justin Mattes.

21 MR. MATTES: Good morning. My name is
22 Justin Mattes.

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1 I am a victim of medical malpractice. I
2 have cerebral palsy because my mother's obstetrician
3 committed medical malpractice in the way he handled
4 my mother's delivery when I was born.

5 All of the physical problems you see
6 before you today are because of the obstetrician's
7 terrible error. My parents did not want to bring a
8 malpractice suit against the doctor who delivered
9 me.

10 Filing a malpractice suit was one of the
11 biggest steps I have ever made in my life. The way
12 I looked at it, if I got any monies from the
13 lawsuit, it would be for things that I would need to
14 live an independent life and so I would not be a
15 burden on my parents or the state. These things
16 include a computer to get gainful employment; a desk
17 so I have the proper space to work; motorized
18 scooters and walkers to assist me in navigating long
19 distances.

20 Mr. Rodriguez's firm took my case, and
21 the defendant doctor only had a \$500,000 malpractice
22 insurance policy from the time I was born. The

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1 doctor agreed that the case should be settled for
2 the policy limits. This settlement took away some
3 of the financial burdens I have to face throughout
4 the rest of my life.

5 When most people hear about pain and
6 suffering, they assume that the person is just
7 feeling sorry for him or herself. The suffering
8 component of these settlements often equals or
9 exceeds the physical element.

10 I always had trouble expressing the
11 emotional difficulties I face on a daily basis.
12 Meeting new people for everyone is awkward.
13 However, because of my CP, it can be a real
14 struggle. In case you haven't notice by now, my
15 speech isn't exactly what you call easy listening.
16 Imagine me trying to carry on a conversation with a
17 stranger who thinks I am mentally retarded just from
18 the sound of my voice.

19 When people without physical
20 disabilities first meet, it is always assumed they
21 have a decent amount of intelligence. When people
22 first meet me, they assume that I am mentally

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1 retarded. Since my speech is great affected, it
2 takes me a bit longer to get the point across that I
3 do have some kind of intelligence.

4 Children come up to me and ask what
5 happened to me. I have had to explain CP to them
6 and sometimes even their parents. Talking over the
7 phone to someone who isn't familiar with my speech
8 is nearly impossible.

9 I always enjoy telling people about the
10 time my scooter broke down and I had to call for
11 help, and they thought I was a prank call.

12 Even though I have a lot of freedom,
13 there are simple tasks I will never be able to do
14 myself. For everything I can do, there is a list of
15 things I can't accomplish on my own. Dressing is
16 easy when I can just throw on a tee shirt and jeans.
17 As you can see, I'm not wearing jeans. Whenever I
18 have to wear a suit or even put on a coat and tie,
19 someone has to help me.

20 One time I even had to ask a health
21 worker to help me button my shirt. Eating can be
22 even more frustrating, especially anything that

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1 needs to be cut up or eaten with a spoon is a
2 hassle.

3 A \$250,000 cap on noneconomic damages
4 would take away the only opportunity a person like
5 me, who has suffered a permanent disability because
6 of a doctor's medical malpractice, has to live with
7 some amount of independence and to enjoy some of the
8 normal dignities of life.

9 A \$250,000 cap on pain and suffering
10 damages if applied to my case would not even begin
11 to compensate me for the daily pain and suffering I
12 have already experienced in my life, much less what
13 I will continue to experience.

14 Everyone without a disability assumes a
15 birthright. I was not as fortunate. I could not
16 have foresee the problem I have faced, nor have any
17 idea what the future will bring. ?At the right time
18 I, not my parents, made the decision that I wanted
19 to sue the doctor. Every penny I received from my
20 lawsuit will go to my care and support over my
21 lifetime.

22 I appreciate the fact that I had the

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1 opportunity to make my own decision and I feel that
2 every child should have that same right when they
3 become adults.

4 I appreciate the fact that I had the
5 opportunity to make my own decision, and I hope that
6 children in similar positions as I was in will have
7 the ability to exercise their constitutional rights.

8 I came here today so that everyone of
9 you would know what malpractice can do to a person
10 and that damage is permanent. I came here today to
11 ask you not -- not to take children who are injured
12 like me, turn them into second class citizens.

13 Thank you very much.

14 MR. RODRIGUEZ: So that you understand,
15 Justin's statement is available in typewritten form
16 if you couldn't understand any part of it.

17 So that you understand, the \$500,000
18 that Justin received, which was the obstetrician's
19 1978 malpractice insurance policy, he got that
20 settlement just a couple of years ago. The only
21 person who benefitted by Justin delaying 20 years in
22 filing suit was that insurance company. They made

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1 20 years' worth of interest on the \$500,000 they
2 owed him back in 1978.

3 And so that you know, people like Justin
4 are very rare. It is very offensive that most of
5 the children whose parents never sued who could sue
6 when they turn adults, in fact, never have the
7 mental capacity to make that decision for
8 themselves, and to take away the right from one of
9 the very few who can do that for themselves is just
10 offensive.

11 And thank you for hearing from victims.

12 MR. SCOTT: Thank you.

13 Jan.

14 MS. SCHAKOWSKY: I just want to thank
15 Justin for that for that statement, for his bravery
16 in coming here to make this statement.

17 And if anyone needs to know about pain
18 and suffering, I would imagine the difficulty in
19 communicating those thoughts, the suffering that I
20 heard you say when people assume you to be mentally
21 retarded. I just thank you so much for coming here,
22 and I think we should all just give him a round of

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1 applause for that.

2 (Applause.)

3 MS. SCHAKOWSKY: Thank you for all of
4 us.

5 MR. SCOTT: Did you want to say
6 anything?

7 MS. TORTORIELLO: Thank you very much.

8 My name is Margie Tortoriello, and I
9 live in Old Bridge, New Jersey.

10 And first I'd like to say, Justin, great
11 job. He's a great travel companion. I met him last
12 night.

13 And, John, you're so brave, and all of
14 you. I'm so proud to be among you.

15 I guess I could say that I'm one of the
16 lucky ones. The doctor that abused me for so many
17 years is in prison for seven years, not because he
18 hurt me or so many hundreds of others, but because
19 he was stealing from the insurance companies.

20 Yes, they caught him. They prosecuted
21 him. The first trial was a hung jury. The second
22 trial he was convicted, full seven years.

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1 He was my OB-GYN for 15 years, and I
2 started going to him at age about 32, and no
3 particularly problems, healthy, and I met him. I
4 was impressed. He wrote books. He had stars as
5 patients, very high level celebrities, and I
6 continued to go to him.

7 During the first year he told me that I
8 had a condition called endometriosis. He then said
9 I had cysts and tumors. I'll spare you all of the
10 details for the time's sake, but he operated on me
11 14 times.

12 The bottom line is after the sixth
13 surgery, I wanted to get a second opinion. I wasn't
14 getting better. I was getting worse. I had gone
15 there with no problems to begin with, and he said,
16 "I don't want you to go to anyone else. You'll be
17 butchered. You need to come to me."

18 The bottom line is he convinced me to
19 stay with him, that he had my best interest at
20 heart, and he was a very convincing, very persuasive
21 doctor and held in high regard, Park and 74th in
22 Manhattan. I mean, I thought, you know, I knew it

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1 all. I had my doctor, and that was who was telling
2 me that I had to go for these surgeries every year.

3 During the last portion of the
4 surgeries, I found out that he was -- the 1998
5 surgery my insurance no longer covered in office
6 procedures. You see, he had an in office surgical
7 suite so more money could line his pockets. He
8 didn't have to share with the hospitals. So there
9 was no notation of what he was doing. There was no
10 peer review. There was nothing other than whatever
11 he gobbled down. Till this day I don't have his
12 records. They're shredded somewhere. We never got
13 them.

14 But in 1998, I had to go to Atlantic
15 Cell Hospital in Manhattan for the surgery. He was
16 so angry because my insurance didn't cover the in-
17 office.

18 He did the surgery. I woke up. He
19 wasn't there. He was never there, and the
20 anesthesiologist that was on call at the hospital
21 said, "Oh, dear, you really didn't need to go
22 through this."

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1 After that I wondered. I never saw my
2 doctor at the hospital. I saw him a week later. I
3 asked him what the anesthesiologist meant by that,
4 and he said, "Oh, they're all so stupid at that
5 hospital. That's why I hate to use it."

6 Later his anesthesiologist that he used
7 in his office flipped on him for FBI purposes
8 because they had him on a drug charge. Yes, they
9 did. He was giving anesthesia to me 14 times as a
10 cocaine addict, a morphine addict, and he passed out
11 on the floor. I don't know why I'm here, but I'm
12 here to tell you this is wrong.

13 There's no money that could bring back
14 years of pain and suffering that I went through 14
15 operations and then a 15th one to try to solve the
16 problem.

17 Just a simple thing like urinating is a
18 chore for me, but I sit with people like this who
19 are so brave, and I say, Mr. Bush, you said you're a
20 loving guy after 9/11, and I survived 9/11, and you
21 said you're a loving guy. Well, look around the
22 room. Be loving now.

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1 We're not looking for a lottery. My
2 God, where's your heart? Where's your soul? These
3 people are hurting. We're hurting.

4 This is something -- I'm sorry. I'm
5 sorry. I said I wouldn't cry.

6 The doctor went to jail because he
7 defrauded insurance companies and they won't have
8 that. They caught him on stealing two and a half
9 million. That's what they proved. God knows what
10 he took. I just know what he had.

11 I just thought, well, he's supposed to
12 have that. He's a doctor. He studied hard. He
13 should be rich, and I never resented that until I
14 found out he was lying to me all those years.

15 Fifteen operations on a woman that was
16 healthy.

17 I worry about the future. I worry about
18 my daughter, our only child, and her children, and I
19 feel the trust level isn't there. You know, if you
20 take this 250 and cap it, then they walk on water.
21 I think that's what they're afraid of.

22 I always felt that, you know, they

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1 minded their Ps and Qs because they could be sued.
2 Let the jury decide. Isn't that what our nation is
3 about? Let the jury decide. When the jury walks
4 into that box, they listen to the facts. It works;
5 our system works. Let it work now. Let us have our
6 day in court. Let these people tell their stories
7 to their peers.

8 If it's too high, it gets appealed. We
9 know that. Listen to the numbers. One in 70 is a
10 victim of malpractice. Out of that one in 70, one
11 in ten only sue. Where are the insurance companies
12 coming up with these figures that this is the reason
13 for the rate so high?

14 Look at the stock market, and do you
15 know what? It's been said so I won't belabor the
16 issue, but I really need to tell you my doctor is in
17 jail because he stole from the insurance companies.
18 These people, their doctors should be in jail, but
19 they're not because I guess they didn't steal or
20 were better at covering it up.

21 He was Dino Gyno, celebrity to the
22 stars, 14 books, 15 books published, and he's in

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1 prison, thank God. But there's still a lot more to
2 be done.

3 I can't believe this bill, and, Mr.
4 Bush, you said you're a loving guy. Show love in
5 this room today. I voted for you. I waited while
6 every ballot was counted recovering from one of my
7 operations, and you've got to do it. It can't
8 happen.

9 Thank you.

10 MR. SCOTT: Bill.

11 MR. DELAHUNT: This has just been one of
12 the most powerful several hours that -- I know I
13 speak for my colleagues -- that any member of
14 Congress has ever had. We are deeply in your debt
15 here.

16 You have brought it home. You have
17 really brought it home, and again, thank you.

18 I'd like to just ask one question.
19 There have been references about confidentiality
20 agreements. How many of you that have settled your
21 cases have confidentiality agreements?

22 (Show of hands.)

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1 MR. DELAHUNT: Was this done at your
2 request or was this done at the insistence of the
3 insurance?

4 MS. STRATMAN: We arbitrated for ours,
5 16 hours to be exactly, two weeks, three weeks
6 before we were to go to court., and it was
7 definitely not our idea.

8 MR. DELAHUNT: Can I ask you this
9 question? Let me rephrase it. Do you think that
10 these confidentiality agreements, if it was to
11 remain confidential, should be at the option of the
12 victim as opposed to the insurance company?

13 If you should just give me a show of
14 hands.

15 (Show of hands.)

16 MR. DELAHUNT: Okay. Maybe it's time,
17 Mr. Chairman, that when this bill comes before us we
18 have an opportunity to make amendments; that it's
19 about time that these insurance carriers understand
20 that fairness and equity require the revelation of
21 the truth of the matters so that it be available to
22 the public.

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1 And I think it's very interesting here
2 that everyone that signed a confidentiality
3 agreement feels that confidentiality should be at
4 the option of the patient, not the insurance
5 carrier. And I would suggest that we be prepared to
6 file an appropriate amendment.

7 MS. CHAFFINS: If I could say something
8 about that, my doctor, she chose to settle with me,
9 and at the settlement -- and I got what I guess they
10 say "the lottery" -- I told her no. My attorney
11 looked at me. I said no. If I walk out of here
12 without a dime today, she does not get
13 confidentiality."

14 If you give them confidentiality, they
15 are more or less saying, "Here's some money. You
16 know, be quite." And I chose not to do that.

17 I don't know if this is the proper time,
18 if I could go ahead and tell my story.

19 I am here and I'm from Martinsburg, West
20 Virginia. I'm 30 years old, and I'm here today as a
21 statistical of medical malpractice.

22 Let me shed a little light on the dreams

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1 of a young female, my dreams. I had a dream of a
2 happy home, including several children to fill it.
3 By all means at 30 years old, this dream should be
4 an attainable reality.

5 But at the age of 25 this dream abruptly
6 came to an end at the hands of a West Virginia
7 doctor. The choice to have more children was made
8 for me.

9 I thank God that I did have one son when
10 I was a teenager and young, and I was waiting to
11 have more children when I was through college. You
12 know, I thought I had 20 years.

13 I went in for what the doctor said was
14 mild dysplasia, abnormal cells on my cervix. Three
15 months later I ended up in a hospital, through that
16 I was miscarrying. My stomach was swollen. At that
17 time, at that hospital was the first time I realized
18 there was something wrong with the doctor that I had
19 seen previously.

20 The emergency room doctor told me that
21 he contacted three gynecologists that would not see
22 me because of the doctor that I had previously been

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1 to. They knew her reputation. That was the first
2 time I knew of her.

3 I waited two days to find out that she
4 had removed my entire cervix. My stomach was
5 swollen from the menstruation filling up inside of
6 me. I was getting endometriosis. I was dying
7 inside.

8 From January to May of that year I had
9 to be put to sleep five times and a tube inserted to
10 drain the menstruation. I went to several different
11 doctors. Everyone came with the same conclusion,
12 that I had to have a hysterectomy at the age of 25
13 because of what she had done. There was no other
14 choice.

15 I could not carry a child where my
16 cervix was done. I would miscarry, if they could
17 even possibly get me pregnant, which they couldn't.
18 There was no way.

19 This is hard for me to be here today.

20 Finally after the months of going
21 through with them inserting the tube, every time
22 they inserted it there was a chance that they would

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1 puncture my bladder. So I decided I had to have the
2 hysterectomy.

3 After that I went to an attorney. I
4 walked in, and I said, "You know, I hear she has --
5 something is going on with this doctor. I want to
6 know what it is."

7 He knew who she was right away. I said,
8 "Okay. Let's get her out of business."

9 He said this is her record. I said,
10 "Let's get her license."

11 He said, "That doesn't happen in West
12 Virginia. You do not get a West Virginia doctor's
13 license."

14 I asked why. He said it's because of
15 the Board of Medicine.

16 My doctor was reviewed by the Board of
17 Medicine. Thirty-nine complaints she has against
18 her. Of that 39, they only chose to look at 17 of
19 those complaints. Out of those 17 complaints and
20 her own words, page after page after page, it says,
21 "Dr. Ritalin herself acknowledges error at the
22 hearing of" and the case, and it goes on case after

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1 case.

2 I asked what was done at this hearing.
3 She was put on probation, probation for three years.
4 As of 2001 she is fully practicing everything she
5 could do. She walks away with her life intact, and
6 I walk away with my destroyed.

7 It has caused problems with me and my
8 husband. I have bouts of depression, and I don't
9 understand why they want to put a cap on the
10 victim's rights.

11 That was my only recourse. He said,
12 "The only way you can damage her is to make her pay
13 high enough that her malpractice insurance will go
14 up."

15 If they take away that right, we have
16 nothing, nothing to look at. I don't understand why
17 she can be practicing after 39 times and they want
18 to put a cap on us for 250. Why is there not a cap
19 for how many times a doctor can harm someone,
20 destroy their life?

21 One of the papers that I have published,
22 it says, "Why does wearing a white coat give you

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1 immunity?" That is something that I'd like to know.

2 They want to cover up all their mistakes
3 and let us walk away with nothing.

4 And about the confidentiality, I know
5 it's a little late for a lot of you guys. Don't do
6 it. I refused, absolutely refused. I will tell
7 every woman that I see, "Don't go to this woman."

8 I know that the insurance people -- they
9 do -- they pressure you to do that. "Well, we're
10 not going to give you that."

11 Well, don't take it. You know, the
12 money that I received does not ever give me the
13 right to have a child grow inside of me again. It
14 doesn't give me back the right to have my normal
15 life back without crying daily, without seeing a
16 pregnant woman walk down the street and know that
17 was taken away from me.

18 Thank you for your time.

19 MR. SCOTT: Thank you.

20 Ms. Stratman, Susan Stratman and her son
21 Daniel from Chesterfield, Missouri.

22 MS. STRATMAN: Hi. Thank you so much

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1 for listening to our stories. This means a
2 tremendous -- a great deal to us.

3 We took Daniel to St. Louis Children's
4 Hospital on July 10, 1996, to have routine hernia
5 surgery. He was supposed to be there several hours
6 and go home that night. Instead he was discharged
7 four months later.

8 The medical errors made by the
9 supervising anesthesiologist and the student nurse
10 anesthetist trainee included administration of an
11 excessive dose of halothane for an excessive period
12 of time; failure to continually monitor Daniel while
13 under anesthesia; failure to properly adjust
14 equipment to monitor blood pressure and pulse every
15 three to five minutes; failure to notice that Daniel
16 was not breathing spontaneously; failure to provide
17 timely resuscitation; and then the anesthesiologist
18 had the student anesthetist alter the anesthesia
19 records to blatantly mislead and misstate the truth
20 about what actually happened to Daniel.

21 We thank the Lord for a cardiologist.
22 Daniel had undergone three open heart surgeries at

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1 Children's Hospital his first ten years of life, and
2 that's why we went back to Children's. We were
3 actually scheduled for a small hospital near our
4 town, but chose to go back to Children's because
5 they are the best, and we wanted the best for
6 Daniel.

7 The cardiologist, who was on vacation,
8 came in immediately when he heard what happened.
9 Daniel was taken to intensive care on a ventilator.
10 Dr. Payne researched, and to make a long story
11 short, he knew immediately that there were mistakes.

12 He demanded an investigation that took
13 four weeks. During that four weeks we were not told
14 anything. Every thing was very hush. Daniel was on
15 a ventilator in intensive care. They were trying to
16 prepare us to turn off his machines.

17 Thank the Lord, he survived, but he
18 suffered very severe brain damage. After the four
19 week investigation, they did tell us everything.
20 The mistakes were admitted. Dr. Payne saw to it
21 that everything was out on the table, everything
22 except for the fact that the anesthesiologist

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1 changed the records, and our lawyer discovered that
2 several years later.

3 Daniel's prognosis at the time was no
4 recovery. They told us after he survived to prepare
5 to take home a little boy who would never walk,
6 talk, go to the bathroom on his own, and they told
7 us to take him home, change his diapers, and try to
8 get on with our lives. He was 11 years old at the
9 time.

10 I told them I wasn't going to accept
11 that, and we're very thankful Daniel can walk, but
12 he needs assistance. He doesn't have good balance.
13 He can talk, but it's very difficult for people to
14 understand him. So we interpret for him. He can
15 eat, but he needs 24 hour care. He cannot dress
16 himself; he cannot shower himself. He's cortically
17 blind, but we are very thankful for the progress
18 that he has made.

19 The anesthesiologist who made the
20 mistakes and changed the records is still practicing
21 at Children's, and unfortunately the cardiologist
22 who blew the whistle is gone. It doesn't make sense

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1 to me then. It doesn't make sense to me six and
2 half years later.

3 In Missouri, we did settle. We settled
4 for a confidential -- we are under a gag order. We
5 mediated, as I said, for almost 16 hours. Fourteen
6 of those hours were on a price. The last two hours
7 were fighting. They wanted us to take everything
8 off of the anesthesiologist's database, and we
9 absolutely refused to do that.

10 We were going to go to court on that
11 issue, but they finally reneged. I would like to
12 see if it is on her database. I have not
13 researched. I didn't know that I was privy to that
14 information, and I'm finding out that maybe I am.

15 But we do have a cap in Missouri. They
16 have an inflation adjusted cap on noneconomic
17 damages. That was approximately 530,000 at the time
18 for each of the two defendants that were named in
19 Daniel's case.

20 Of course, these caps are grossly
21 inadequate to cover Daniel's medical costs, needs.
22 How it turned our family, we have four daughters.

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1 It literally turned our lives upside down.

2 We left one morning from Children's
3 hospital. We drove 65 miles to get to the hospital,
4 and we never ever stayed in that house again. We
5 were never able to go back home.

6 We live in St. Louis County now so
7 Daniel can be near doctors and therapists and
8 everyone that he needs to see. We literally have
9 changed every aspect of our lives in every single
10 way. There was nothing about July 9, 1996 that was
11 the same on July 10, 1996.

12 And she continues to practice, and we're
13 not bitter. I'm not bitter. I have had to deal
14 with that. We are so thankful to have our son. He
15 is the light of our lives. He is an encouragement
16 to everyone who meets him.

17 He never complains. He is just amazing,
18 but he has a fight and a determination to get on
19 with life. He wants to go to college in a year, and
20 I believe he will go.

21 But this cap, President Bush's proposed
22 cap of \$250,000 regardless of the number of

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1 defendants, it would cut Missouri's caps by 75
2 percent, and Missouri's caps are already unfair.

3 I think just a summation: to place
4 arbitrary limits, it victimizes people like Daniel
5 who are already victims, and I just feel like
6 there's got to be a way to stop this. As many
7 people have said, we need to stop insurance
8 companies from having so much control over health
9 care system.

10 We need to reform the accounting
11 practices and the business practices of the
12 insurance industry, and we need to improve the
13 quality of medical care by weeding out bad doctors.

14 We need state medical boards who will be
15 strengthened, and we need doctors disciplined for
16 their incompetence.

17 We need help for people like Daniel who
18 are legitimately injured. We don't need big
19 corporations and negligent doctors to get away with
20 murder anymore.

21 Lawyers are not the problem. Jurors are
22 not the problem. The system is not the problem.

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1 Daniel is not the problem. Insurance companies are
2 the problem, and doctors making mistakes are the
3 problem, and that needs to be fixed.

4 Thank you very much.

5 MR. SCOTT: Thank you.

6 Bill.

7 MR. DELAHUNT: Thanks, Bobby.

8 I think CSPAN is taping this particular
9 hearing, and I want to make a point, and I think
10 it's important to the viewers that will watch this
11 understand that these people who have testified here
12 today, most of them it's my understanding, their
13 cases are over. Their cases are settled. They're
14 not here today for themselves. They're concerned
15 about others. They're concerned about the system.

16 No one is here today because of self-
17 interest. They care about other people, about our
18 community and about our country and about our
19 system.

20 MS. JOHNS: Mr. Chairman, if I may, I
21 would like to share a little bit about what Daniel's
22 mother said. There is a big promotion out there

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1 that doctors are having to leave their states
2 because of high insurance premiums.

3 MR. SCOTT: Ms. Johns, do you want to
4 state your name, please, for the record?

5 MS. JOHNS: My name is Jodie Johns. I'm
6 from Invergrove Heights, Minnesota.

7 Our family, too, left the state that we
8 were living in in order to receive better health
9 care. Our son was injured in the State of
10 Washington, and because of something called as
11 Casper alert, that's a black flag that was put on
12 our son's file that we didn't know about for three
13 and a half years. Over 100 hospitalizations and 22
14 surgeries, we did not know why we were treated with
15 such contempt, such inappropriate and demeaning
16 ways.

17 We found out through our attorney that
18 there was something called the Casper alert. That
19 alert said that we were contemptible and litigious.
20 We were simply looking out for our son's best
21 interests.

22 He was injured at day six. He was

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1 injured by jaundice. Over 60 percent of all babies
2 get jaundice in this country. It was eradicated in
3 the 1970s. It has sadly reemerged simply because of
4 a breakdown in our health care system.

5 Our drive-by deliveries, our fragmented
6 system; we have a serious problem.

7 I am grateful for the opportunity to be
8 able to be a part of a group of mothers who have
9 decided that we cannot allow this to continue to
10 continue. We are here today to insure the safety of
11 our health care system, and yes, in some ways,
12 legally in some ways, we pray we never have to come
13 back into that system.

14 But unfortunately, because our son has
15 been injured we have to live in the health care
16 system every single day. We count on the health
17 care system every single day to keep our baby alive.
18 My son is five and a half years old. He will have a
19 lifetime of health care challenges.

20 I do not want an adversarial position
21 with the my health care people. I do not want to
22 allow the insurance companies to create a myth and a

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1 rift between patients and doctors. This is
2 appalling. We need to work together.

3 What we're here for is for patient
4 centered care. We are here for a challenge and a
5 change. We are changing agents. We are the very
6 people who are the eyes and the ears of the front
7 line, and we can say today right here and now we
8 need to make those changes. We are there.

9 Listen to what we have to say. We're
10 not here to be adversarial with our doctors. We
11 want to be partners. We want to be a part of a
12 solution. We can to make changes for the betterment
13 of all people in these United States.

14 We want to make a difference for our
15 doctors. we want them to thrive and grow. I have
16 the utmost respect for some of the greatest human
17 beings I've ever met. I call them "doctor," but I
18 am also appalled at the fact that the very person
19 who refused to put my son under those bilirubin
20 lights went back three days later and changed the
21 records. That allowed me to never even consider a
22 confidentiality agreement. She still practices

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1 today.

2 I will also say this. Due to medical
3 error after medical error after medical error over
4 100 hospitalizations, we fled the State of
5 Washington, and we moved to Minnesota to receive
6 better health care. We didn't know a soul in
7 Minnesota. We did not have job stability. We
8 didn't have a church. We left everything we knew
9 behind to move to a state for one reason, and that
10 was for better health care.

11 If the doctors are running and fleeing
12 the states, I don't know where they're going, but I
13 can tell you this family dropped everything to save
14 the lives of their two children, and we are grateful
15 to have this opportunity to be here.

16 Thank you for listening to us. Thank
17 you for taking the time to really listen and to let
18 your heart -- let your heart be moved.

19 God bless you and thank you.

20 MR. SCOTT: Thank you very much.

21 And your testimony, I suppose, is one of
22 the problems with one of the provision, the joint

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1 and several liability, where you would have to chase
2 after each and every person that had anything to do
3 with the malpractice that was inflicted on your
4 family and get their portion, a separate lawsuit for
5 each and every person rather than sue the hospital
6 and let them chase after everybody or just have an
7 insurance policy that covers everybody. You would
8 have to chase after each and every person, and if
9 you left one out, you would lose whatever everybody
10 else pointing at the empty chair could blame on
11 them.

12 MS. JOHNS: I just want to make one more
13 point about that. My son did prevail apparently in
14 the health care system, and I have to say that every
15 single dollar that Nathaniel received will go
16 directly back into the same institution that injured
17 him. They will profit again from him.

18 So thank you again.

19 MR. SCOTT: Thank you.

20 Ed Whiddon from Georgia.

21 MR. WHIDDON: Yes, sir. I appreciate
22 you're letting me speak.

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1 I thought we would be speaking tomorrow,
2 and we had a flight coming in this afternoon. So we
3 found out it was earlier. I got all my family up at
4 five o'clock this morning to stay by to get a flight
5 here, and I was afraid I wasn't going to be able to
6 speak.

7 My name is Ed Whiddon. I was an Eastern
8 Airline captain. I was an Air Force colonel. I was
9 a Henry County Commissioner Chairman in my county;
10 had nothing wrong with me.

11 Eastern had shut down, as a lot of you
12 know. I got an opportunity to go fly with a new
13 carrier, ValuJet, just starting out; going to be a
14 training pilot for ValuJet. That's all I had ever
15 done in the Air Force and Eastern, was be an
16 instructor pilot. And I thought, well, I'll have
17 just a little, simple, simple operation because we
18 had 17 days before we were going to get our
19 airplanes from the FAA for the flying purpose.

20 So I went in, and a very quick
21 operation. In fact, I even considered out-patient.

22 I came out paralyzed from the waist

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1 down, confined to a wheelchair, months and months of
2 therapy; could not get out of bed, couldn't turn
3 over. They messed up. I'm in a wheelchair sitting
4 back over there right now every day for the rest of
5 my life.

6 Needless to say, I'll never fly again.
7 The point I'm making and I'm trying to make, I
8 wanted to make real pointed this thing about pain
9 and suffering, sometimes it's the only money that's
10 there because I was unemployed. Eastern Airlines
11 had shut down. I was no longer flying for the Air
12 Force. I was no longer a county commission
13 chairman. I was zero. I was a slab of meat with no
14 money, no money.

15 So we spent three years doing
16 depositions, and my attorneys, bless their souls,
17 stayed with us, spent a lot of money. In Georgia
18 you have to have another physician to sign an
19 affidavit that you have had grievous wrong and they
20 didn't meet the standard of care or you don't bring
21 one of these frivolous lawsuits.

22 (Laughter.)

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1 MR. WHIDDON: So anyway, my case was not
2 frivolous, but three years after we filed this thing
3 and many depositions and written statements from the
4 insurance company of their insurance policies and
5 amounts, finally we decided, well, we'll try to go
6 to negotiation or arbitration.

7 And I paid \$1,500 for an arbitrator. We
8 go in there and, of course, I didn't realize about
9 the economics of not having a job and everything.
10 They laughed in my face. They offered me \$125,000
11 max for my case, and I'm lying there. I can't even
12 hardly move.

13 And I'm looking, and I'm thinking, "How
14 can they possibly do this?"

15 I owed twice that amount at the
16 hospital. I owed twice that amount for my
17 attorneys, and they offered me 125,000. I said, "I
18 can't take it. It doesn't begin to pay."

19 They laughed in my case, and they said,
20 "We'll see you in court."

21 So my point is if they get down to 250
22 on pain and suffering, they're not going to settle

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1 with anybody any time anywhere because there's no
2 need for them to.

3 Number one, a decent attorney will not
4 take a case knowing that he's got to spend 100 to
5 \$150,000 investigating it and documenting the case
6 when he's got a chance of making \$80,000 off of max
7 for pain and suffering? They will shut down the
8 cases against the people. They will shut them down.

9 I guess the real point that I want to
10 say is that if anybody thinks that this law is a
11 good law -- and I hear this from all these people
12 all day long -- I would invite anybody that thinks
13 it's a good law to come sit in my wheelchair or
14 spend 24 hours in my lifetime when I go up to the
15 lunch counter trying to reach the food like this and
16 walking in and people looking over me, asking the
17 customers behind me because they think I'm probably
18 there with my mamma.

19 It hurts. It hurts every day, and I'm
20 so fortunate compared to some of the stories we've
21 heard here today.

22 Two hundred and fifty thousand dollars.

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1 I say anybody that wants to offer that to the
2 President, to the other party, whatever, shame on
3 you. That's a horrible, horrible law.

4 MR. SCOTT: Thank you very much.

5 MR. DELAHUNT: I just have this one.

6 MR. SCOTT: Well, let me just make this
7 one.

8 One of the things you've illuminated is
9 the difference in state laws on speculative damages.
10 Some allow speculation of damages. If you have
11 earning potential, that can count. Others, if you
12 don't have a job right then, you can't speculate as
13 to what it could have been, and the amount of
14 damages would vary from state to state.

15 And that is why one size fits all just
16 doesn't make it.

17 MR. WHIDDON: It doesn't work. Sir, I
18 might add one other thing, and I forgot it, and I
19 apologize.

20 During the information, they told -- our
21 attorneys sent letters saying that they had one
22 policy for \$1 million. We asked them in

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1 depositions, and they said they thought that's what
2 it was. They'd supply the answer to us.

3 The answer came in written form, \$1
4 million.

5 When we won, we had a very good award.
6 I've got my money. I'm just paying my money today
7 trying to stop this horrible law. When we got the
8 award, we had agreed to a high-low, and the award
9 was higher than the amounts that we had done for the
10 high-low.

11 But I was satisfied. You know, you take
12 your chance and that goes, and I would have paid off
13 my attorneys and my doctor bills, and I'd have still
14 had some money that I could have got by with. And,
15 frankly, you know, I'm just a poor boy and I didn't
16 need much, but we got to worrying about the way they
17 were so excited. They were jumping up and down, the
18 attorneys for the other side. So we said, well,
19 maybe -- we had made part of the high-low that they
20 verify the policies. They didn't verify. We kept
21 after them. They'd file suit to make us take the
22 low. They filed suit to make us take the money.

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1 Then when they went into court, the
2 judge looked at it and he found the insurance
3 company and the people involved in the transaction
4 guilty of fraud, fraud. There was four times the
5 amount of money that they had said.

6 So the insurance companies, they are
7 greedy. They're trying to push the good doctors
8 aside, and we need to get rid of the bad doctors,
9 but they are taking advantage of people.

10 And my lawyer, who is a gentleman,
11 assumed that they would tell him the truth when they
12 sent a letter saying what the coverage was. He told
13 me he never will believe anybody again from an
14 insurance company.

15 So you've got to watch them, and if they
16 get 250, it's over.

17 MR. SCOTT: Thank you very much.

18 Bill.

19 MR. DELAHUNT: Yeah, just for one
20 minute, I think that requires when this bill comes
21 before this committee an amendment to insist and
22 mandate full disclosure of coverage. Put it right

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1 out on the table. If the insurance companies want
2 to push this particular legislation, let's get them
3 to put right out on the table the amount of
4 coverage.

5 And I'm just going to make one request
6 of you, Bobby and John. This issue is just so
7 important, and like I said earlier, it has been such
8 a powerful experience for us that I would hope that
9 you and Mr. Conyers would negotiate with the
10 Chairman of the committee that when we have a formal
11 hearing, you know, not just one day with four
12 witnesses, but several days, of one day dedicated to
13 victims so that, again, the American people can hear
14 and be reminded of where we're at, what the problems
15 are, and you know, have input into the process, you
16 know, to their members of Congress what makes sense
17 in terms of how to address it.

18 MR. SCOTT: Thank you.

19 We have a couple other witnesses, and
20 Vicki Vassal will be next, and then Ms. Surlas.

21 MS. SURLAS: I just wanted to make a
22 quick comment in case I don't get to talk.

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1 Everyone keeps talking about the award
2 to the victim of 250,000. I think everyone forgets
3 my jury trial was two weeks long. Our expenses were
4 almost 100,000. Plus my attorney's fees, which were
5 well deserved.

6 That means I would have gotten about
7 \$65,000 for the rest of my life. So when they talk
8 about a cap of 250,000, it's not a cap of 250,000.

9 For some people the cost could be even
10 higher. They may end up with 50,000 or less.
11 Nobody is thinking about the other side of it, and
12 the media never prints the other side of it. They
13 don't hear about all of these cases and all of the
14 pain and suffering and what it really does.

15 They need to print the truth.

16 MR. SCOTT: And as Mr. Whiddon pointed
17 out, the offer of settlement with nothing to lose,
18 if all you can lose is 250, you're certainly not
19 going to offer 250. You'll offer much less than
20 that.

21 Thank you.

22 Ms. Vassal.

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1 MS. BOATWRIGHT: Good afternoon. My
2 name is Nikkoll Boatwright, and I'm a survivor of my
3 mom, Hyacinth Vassal, who died of breast cancer.

4 My mom went in for a routine mammogram
5 in October of '99. Despite the federal law which
6 requires the patient be notified that they find a
7 suspicion area, you know, of the mammogram, she
8 wasn't notified at all. Despite the fact that her
9 doctor's office was right down the hallway from my
10 mother didn't mean anything.

11 She was never notified, and the question
12 was brought up to him: since you were so close to
13 her office, why didn't you just walk down the
14 hallway and let her know?

15 He replied that he didn't want to upset
16 her at work. I think my mom would have preferred to
17 get upset over a little small problem that could
18 have been taken care of than a bigger problem that
19 she literally had to die of.

20 In August, she felt a lump in her breast
21 herself. She immediately went to her doctor. He
22 had several occasions to notify her. She called her

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1 doctor three weeks after this mammogram was taken in
2 '99. He stated -- she called him for a report to
3 get a clearance for her other job. He wrote a
4 letter stating that my mom was in perfect health.
5 Nothing was wrong with her. She was able to work.

6 He could have brought it up at that
7 time. Nothing was stated.

8 He had another opportunity in January
9 when she went for her primary check-up. Nothing was
10 stated. It was not until August that she left the
11 lump herself and immediately went to the doctor,
12 which they did an immediate biopsy that day. In a
13 couple of days it was reported that it was breast
14 cancer.

15 And when we were there that day the
16 surgeon looked into the file and said, "Somebody
17 made a boo-boo," because it was in the chart that it
18 was a nodule in question in the area, and it wasn't
19 stated to her. It wasn't reported. It wasn't sent
20 off. A letter wasn't; it wasn't even a phone call,
21 which he did state it was a phone call to my number,
22 and he said he spoke with a man. There's no man

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1 that lives in that house. So that was another lie.

2 The tumor was so big that she had to
3 have a complete mastectomy. The problem didn't stop
4 there because it went to her liver to and to her
5 lungs.

6 The doctor only gave her three months to
7 live, which within three months she did pass, and I
8 mean, for people to say that -- not people in
9 particular -- but for Bush to say that a lottery on
10 lawsuit, I don't see how he can even state something
11 like that because of the fact that you purchase your
12 lottery ticket at a store, a grocery store or a
13 convenience store. You cannot go to a store and
14 purchase a ticket for your life.

15 I mean, my mom probably could have been
16 right here to give her story, but she's not. So I'm
17 here for her.

18 I'm supposed to be getting married next
19 year, and I mean, I can't even have my mom at my own
20 wedding. I'm her only child. She won't even be
21 able to see her own granddaughter go to school or
22 anything, and I mean something that could have been

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1 taken care of at an early date, which it wasn't. So
2 that's why I'm here.

3 I mean, you hear stories of everyone
4 here. These are real stories, real facts. I mean,
5 and who are the real victims? It's clear in your
6 eyes who are the real victims right now.

7 The worst part of our ordeal is the pain
8 and suffering, the headache, the discomfort, the
9 difficult that either we're living with a permanent
10 disability, a loss of a loved one. It's horrible.
11 In our eyes it's hurtful, but is it only in our eyes
12 to see that?

13 I'm sorry. I mean, I can't anymore, but
14 I'm just here on behalf of my mamma, and I'm glad
15 everybody is here to voice their opinion because to
16 hear the real side of what's the fact is really good
17 that we're here.

18 We came together from different states.
19 I mean, I flew in from Miami and to be here in this
20 cold, it was a sacrifice for me. So I'm thankful
21 that I'm here. I'm thankful that my voice is being
22 heard.

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1 Hopefully it will make a differences. I
2 hope that our voices today will make a difference.

3 Thank you.

4 MR. SCOTT: Well, thank you, and the
5 purpose of this forum is to make sure these voices
6 are heard. So I want to thank you for your
7 testimony today.

8 Ms. Burney.

9 MS. BURNEY: I want to thank you for
10 giving me a chance to say something. I came all the
11 way from Clarksville, Tennessee, and the reason I
12 did that was to be a part of this hearing, and of
13 course, I heard all of the stories that have been
14 said this morning, and I'm really emotionally
15 distraught now to think that all of those things are
16 happening.

17 My situation that I want to speak about
18 is about nursing home abuse and neglect. My mother
19 died as a result of abuse and neglect in a nursing
20 home, and after she died I went to the state
21 agencies and the proper people trying to get
22 something done about her situation and about all of

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1 the situations I had observed in the nursing home
2 while she was a resident.

3 I did not get any type of response, not
4 even a letter or any response to my complaints to
5 the state agencies. So I filed for a lawsuit
6 against the nursing home where she lived. My suit
7 is still going on after four years, and it's all of
8 these people that talk about frivolous lawsuits.
9 Frivolous lawsuits never get to this point. You
10 have four years.

11 I did not file the lawsuit for money. I
12 did not file the lawsuit for any -- as a sense of
13 justice, although my mother did not have her day in
14 court and I am sorry about that, but I filed the
15 lawsuit trying to get help for the other people who
16 lived with her and I loved in the nursing home where
17 she lived.

18 Virtually all nursing home victims of
19 abuse and neglect and even when it's murder are
20 denied the justice of criminal courts. Instead
21 public health officials may, if they do anything at
22 all, issue a citation or request a written plan of

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1 correction or impose a fine which is far too often
2 never paid.

3 And I Have been working in this four
4 years, and I have not heard of fines being paid.

5 This is not what happens when someone
6 outside a nursing home is abused, neglected or dies
7 before his time. There follows an arrest, a charge,
8 a trial, and a prison sentence. This constitutional
9 right is denied virtually all residents of nursing
10 homes.

11 If residents or family members are to
12 find some measure of justice, they must turn to a
13 civil court in order to find at least limited
14 justice, and as I said before, when I filed my
15 lawsuit, I didn't do so in search of that limited
16 justice, although it does hurt that Mamma didn't
17 have her day in criminal court. I certainly did not
18 do so for money. There is not enough money in the
19 world to prompt me to go through what I have gone
20 through during the unfolding of this lawsuit.

21 My emotions have been overwhelmed. My
22 health has been severely compromised. My dignity

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1 has been affronted, and access to people I love has
2 been denied.

3 Those of us who have filed lawsuits in
4 hopes of encouraging nursing home owners to provide
5 quality care know that they need a critical
6 disincentive to do so; that the only way to get
7 their attention is to hit them where it hurts most,
8 in the pocketbook.

9 Make no mistake about it. Two hundred
10 and fifty thousand dollars is not a critical
11 disincentive. If tort reform is enacted, far too
12 many nursing home owners will pay those small
13 settlements and continue to provide an environment
14 where abuse, neglect and murder occurs. They will
15 thumb their noses at family members who have lost
16 their last hope to stop the egregious failure of
17 care that occurs in most nursing homes.

18 If you have experienced what I have
19 experienced, and many others, if you had heard what
20 I have heard, would you want someone you love to
21 live in a nursing home where care is not provided
22 because of corporate greed, to make money and to cut

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1 the staff where the people cannot be taken care of?

2 At this, and the President and the
3 members of the health care industry persist in
4 calling lawsuit frivolous. I can assure you that if
5 I were at liberty to tell you the circumstances of
6 Mamma's last years, of her last days, not one of you
7 in good conscience could call my lawsuit frivolous.

8 I beseech you to value the lives of
9 people who are victims of malpractice. I beseech
10 you to assure that residents of nursing homes will
11 be given their day in criminal court. I beseech you
12 to reject tort reform, which is a rhetorical device
13 intended to mislead.

14 And we are here today, many of us, at
15 our own expense to try to appeal to the people of
16 you who have the ability to bring about change and
17 make a difference. Please remember all of these
18 stories you've heard today and try to end this tort
19 reform and the awful, pitiful \$250,000 cap.

20 Thank you for letting me speak.

21 MR. SCOTT: Thank you.

22 Deborah Surlas.

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1 MS. SURLAS: I will keep mine brief
2 because the hour is getting late.

3 I am a registered nurse, and that did
4 not help me prevent the malpractice that occurred to
5 me. I was diabetic for 20-some years. Diabetic
6 retinopathy is one of the leading causes of
7 blindness. My HMO sent me to an incompetent doctor.
8 I was going for an ophthalmology diabetic check-up.
9 I was actually sent to an optometrist because I also
10 needed a new prescription.

11 The optometrist called himself Dr. So-
12 and-so. He did not say, "I am an optometrist,"
13 which I knew was not adequate for me. I thought he
14 was an ophthalmologist.

15 I was in another hospital, and the
16 doctor treating me there for some other diabetic
17 complications asked that I be seen by the
18 ophthalmology department to evaluate the degree of
19 diabetic retinopathy in my eyes.

20 I was seen by a resident in the very
21 beginning of his training in ophthalmology. Again,
22 he was slightly older looking. He called himself,

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1 Dr. So-and-so. I didn't know he was a resident just
2 beginning his training. He was not overseen by an
3 attending physician.

4 He misdiagnosed me with glaucoma, which
5 does run in my family, although I have never had
6 glaucoma.

7 Then I chose to have follow-up care with
8 my doctors at home because of my HMO. They sent me
9 again to the same doctor's office. This time I was
10 seen by the ophthalmologist now because I had a
11 diagnosis of glaucoma, not because of my diabetes.

12 That doctor followed along with the
13 resident's diagnosis of glaucoma and again missed
14 the fact that I had advanced retinopathy in my eyes
15 from the diabetes.

16 Eventually one of my eyes hemorrhaged.
17 I saw him again. He had no idea what happened other
18 than it bled, didn't know what was wrong.

19 I finally went outside my HMO for a
20 second opinion to a very good ophthalmologist who
21 specializes in retinopathy, which not everyone does.
22 During the course of our -- well, also later on,

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1 although I've had almost 4,000 burns of laser in my
2 good eye to preserve that vision which has been
3 compromised, I went totally blind for seven months
4 because of all of the blood in my eye, and I had to
5 wait for it to clear up.

6 So that we can say that you can try and
7 walk in my shoes. You can shut your eyes to see
8 what it's like to be blind, but you know, you can
9 always open your eyes again.

10 I live in fear that anything could
11 happen to my so-called good eye, which is like
12 looking through a dirty glass of water. I know what
13 it is like to be totally blind.

14 I was a highly successful business
15 person. I've cut back on a lot of that because I
16 can't go anywhere at night. I'm like an animal at
17 home.

18 I can't see in the dark. I can't see in
19 dimly lit rooms. I can't go outside of my house at
20 night even to take our dogs out because I can't see
21 well enough.

22 If I'm in a sunny day and I walk into a

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1 restaurant, I can't see. There's an entire list of
2 things I can't do. I also can't see in bright light
3 because of the damage to my good eye.

4 If I had only known and been sent to
5 decent doctors or known that they were students. My
6 HMO still to this day uses this same one
7 ophthalmologist for his diabetic patients.

8 During the course of our trial, we found
9 out that his specialty was ocular plastic surgery,
10 not diabetic retinopathy, and he is the only
11 ophthalmologist that the group uses.

12 Medical care is too expensive for
13 patients to go outside their insurance carriers to
14 get care. So I would like to say that we've already
15 been victimized once. That's more than enough. To
16 impose these new caps of 250,000 -- we've just
17 discussed that that doesn't even mean 250,000 --
18 would be victimizing us a second time, and that's
19 just not fair.

20 So I urge you to please convince them
21 all that we don't want to be victimized again, and
22 as the Congressman said, my case has already been

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1 settled. I am not here for myself. I am here for
2 all of the other victims and the future victims.

3 Thank you.

4 MS. TEISCHMAN: My name is Camille
5 Teischman. I'm from Seaford, New York.

6 I'm here today to share the story of my
7 daughter, Michelle Teischman, and to speak on her
8 behalf and on behalf of many more who have suffered
9 and who may continue to suffer the pain and agony of
10 medical malpractice.

11 This is a picture of my little daughter
12 now. She's 16 years old. When Michelle was born,
13 this is the first picture that I saw of my child. I
14 never got to see her because she was whisked from
15 the hospital off to another hospital to try to save
16 her life.

17 Placing an arbitrary cap of \$250,000 for
18 life on medical malpractice is unjust. I couldn't
19 pay for the nursing care alone that helps me care
20 for my child on a daily basis with that amount of
21 money, needless to say, the other services and
22 equipment that she needs that are not covered by

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1 insurance companies.

2 We cannot take medical malpractice cases
3 out of the hands of the American judicial system.
4 An arbitrary cap of 250,000 is discriminatory. Each
5 person's case is different and unique and must be
6 judged on a one-by-one basis. It must be fair and
7 impartial.

8 I'd like to share Michelle's story with
9 you. I'm an educator, and I guess the reason that
10 I'm here is I felt that it was important because I
11 feel that Congress, President Bush, the American
12 public needs to be educated as to what the right
13 thing is here to do.

14 On March 19th, 1986, my life changed.
15 That's the birth date of my daughter, Michelle
16 Teischman. It was the night that would never be
17 forgotten. It changed life for my family forever.

18 Michelle suffered serious brain damage
19 because the on call obstetrician left the hospital
20 for many hours. I was the victim of a car accident,
21 near fatal collision. They took me to the nearest
22 hospital, which was a community hospital. There was

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1 no doctor on call. It took hours to get an
2 obstetrician.

3 And then when she came, the doctor put a
4 fetal monitor on her and left me to go pick her
5 husband up at the hospital. I was left in the care
6 of ER nurses who did not know how to read a fetal
7 monitor strip. I had a placenta abruptio driving my
8 car home from work one day and what was a beginning
9 of a placenta abruptio ended up 100 percent placenta
10 abruptio because they waited so long to take my
11 child. She could have been near normal and not with
12 the medical complications she has.

13 My child suffered a severe deprivation
14 of oxygen before her birth and has devastating
15 injuries as a result of it. Just to name a few,
16 cerebral palsy as a result of global brain damage,
17 severe developmental delays, asthma, hyper reactive
18 airway disease, hydrocephalus necessitating a VP
19 shunt, microcephaly, nystagmus, strabismus, and the
20 list goes on and on.

21 Michelle is 16 years old, soon to be 17.
22 Although I try to make her life as normal as

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1 possible, Michelle is quite limited. It is very sad
2 because she understands a lot. she is aware of the
3 world around her, but she is confined to a
4 wheelchair. She cannot speak to tell you her needs
5 or wants.

6 Michelle needs someone with her 24 hours
7 a day. Michelle will never be able to do the things
8 that you or I do. She cannot go to the bathroom by
9 herself, bathe herself or groom herself. She cannot
10 feed herself. She cannot defend or protect herself.
11 She cannot go outside to run, romp, and play.

12 Michelle will never go to college, get
13 married or have a family of her own one day.

14 No one can tell me that her pain and
15 suffering is only worth \$250,000 for her entire
16 life. This is not even a drop in the bucket for the
17 ongoing care that Michelle needs.

18 Michelle did not ask to be harmed at
19 birth. She is entitled to be compensated for the
20 devastating losses she has sustained, not only
21 physical, but also emotional. Michelle's pain and
22 suffering endures each and every day of her life.

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1 She cannot even tell you where it hurts or why she
2 is sad.

3 Some people before talked about the
4 insurance industry, and this happens to be my pet
5 peeve because I want you to clearly understand what
6 has happened as a result of my daughter's
7 settlement.

8 The insurance company has not been too
9 happy that I won. So since the settlement of my
10 daughter's case, which took approximately ten years,
11 I am now on my third lawsuit against the insurance
12 company because they continue to deny medical
13 necessity on my child.

14 I really flew off the coop when my
15 daughter went into her second neurosurgery. The
16 doctor said she needed to have her nursing care, and
17 I was told that there was no medical necessity after
18 this. That was the second neurosurgery to revise
19 her shunt which popped. Now, that is sort of a
20 lifeline for her because she has a blockage in her
21 brain, and without this shunt she would not live.

22 And I pursued a campaign of my own. I

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1 did publicity conferences. I went to the news. I
2 went to the physician with the news, and I said,
3 "You must speak and advocate for your patient. This
4 is not right. The insurance company can't tell you
5 what your patient needs. You must tell the
6 insurance company what this patient needs."

7 They have tried to financially tear me
8 apart by dragging me through these ongoing cases. I
9 have been through the last year alone the external
10 review process of the State of New York three times
11 because they denied medical equipment like a sander
12 which my daughter needs to be in every day to allow
13 her bones in her body and her body functions to
14 continue to function.

15 That was absolutely frivolous because
16 that's not something you argue about. These are
17 needed pieces of equipment.

18 Everything I apply for they deny. We've
19 been through ongoing and ongoing with nursing care.
20 One I won the suit with the nursing care, they
21 turned around and pulled all of the therapies. And
22 I'm presently battling out to maintain therapies.

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1 So you talk about financial burdens and
2 economic damages. If I didn't have the monies from
3 the settlement, I would not have been able to pursue
4 these continuous cases because, you know, that's
5 what they were trying to do, sort of strangle me,
6 you know, midstream because I wouldn't be able to
7 win a case if I didn't have the financial backing to
8 do so.

9 So, you know, the insurance companies,
10 you must take a very close look at the insurance
11 companies and see what they're doing. They're
12 making plenty of money on our children.

13 I was really appalled when I saw an
14 advertisement of the very insurance company who was
15 denying benefits of my child to turn around and say
16 that they were advocating for children with brain
17 injuries and wanting to help out by setting trust
18 funds up for these children. I mean, that is
19 ludicrous.

20 We must demand accountability from
21 medical professionals. Let's ask the question: why
22 are there so many medical malpractice cases? Why?

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1 Don't look at the victims. Look at the
2 doctors. I mean, I have some wonderful doctors
3 also, as other people have said, that have helped my
4 daughter to survive, and I'm thankful for that. But
5 I also know that there are many that are not doing
6 the job they're supposed to do.

7 I have a 20 year old son that just went
8 off to college to become a doctor. He said, "Mom,
9 someone has to make changes and someone has to make
10 a difference."

11 So you know, we know that everyone is
12 the bad guy here, but those who do make these
13 tremendous errors like the stories you've heard
14 today, there has to be some accountability. Don't
15 put the burden on the victims of those malpractice
16 cases.

17 Thank you.

18 MR. SCOTT: Thank you. Thank you very
19 much.

20 I think we have one more witness.

21 MS. KATSOULAS: Yes, and I will be
22 brief. I promise.

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1 MR. SCOTT: Okay.

2 MS. KATSOULAS: Hi. My name is Terry
3 Katsoulas. I actually am no longer Terry Katsoulas.
4 I'm now Terry Ridgewell. I'll explain.

5 My husband died six weeks after being
6 diagnosed with stomach cancer. However, he had been
7 under doctor's care for five years, and you know,
8 that's the long and short of it, but in retrospect,
9 you know, I, too, have a gag order, not that I got
10 gozillions. Believe me, I didn't. It will cover my
11 children's college, and it will keep a roof over our
12 head, but that's pretty much it.

13 This 250,000 cap is absolutely
14 ridiculous, and if you really think about it, it's
15 only about, like this woman said earlier, about 65
16 when all is said and done, and probably even less
17 than that.

18 But something definitely needs to be
19 done, and I just wanted to be heard.

20 Thank you.

21 MR. SCOTT: Thank you.

22 We had one other witness that wanted to

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1 testify.

2 Thank you.

3 MS. FULTON: My name is Cathy Fulton,
4 and I'm from Jackson, New Jersey.

5 And to just make it briefly, too, I
6 drove down here yesterday and to voice my opinion,
7 too. In this entire session here, I have been
8 enlightened myself, not knowing what the facts are
9 here and being told, like hearing about what the
10 insurance companies -- how really they are the ones
11 that are creating this entire problem.

12 If I don't know about it, millions of
13 other people in this United States do not know about
14 it. And it is something that needs to be changed.

15 And nobody is here. I'd rather have my
16 husband here than being here or having to deal with
17 a lawsuit and dealing with all of this stuff, just
18 like everyone else wants their loved one.

19 My husband was diagnosed with lymphoma
20 last May 15th. He comes home from the doctors after
21 my four year old daughter had her birthday party,
22 and he tells me that when he came back home.

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1 We also made a trip to Disney World,
2 where we were leaving on May 24th, and he had a
3 biopsy done on May 20th. So we had to deal with all
4 of that pressures, and June 1st we come back, and he
5 was admitted to the hospital. They told us that we
6 would go through hell and back again, and what
7 actually happened to him was he was given the wrong
8 chemotherapy. The lymphoma did not kill him. The
9 chemotherapy did.

10 They did not read the label on the
11 chemotherapy. That was an entire breakdown of
12 protocol of the way the system works on how the
13 chemo gets from the floor down to the radiology
14 room. Every step of the way there was numerous
15 spots where they just had to read the bag. That's
16 all they had to do, right down to the doctor where
17 the doctor at the last minute could say, "What is
18 this?"

19 Nobody read the chart. Nobody read the
20 chart. I was with my husband. The entire process
21 took about two, three hours. Several other times he
22 had the same procedure, which was given through a

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1 lumbar puncture, and it took 20 minutes. I was
2 waiting at least over two hours for him, and they
3 did not realize the mistake until eight hours later
4 when he was supposed to get another chemo put into
5 him intravenously, where that one was given him
6 intrathecally, which is fatal, and it says it right
7 on the bag.

8 This happened Thursday. My sister and I
9 stayed there the entire time until that Monday. It
10 was a slow, painful death, watching him get
11 paralyzed from the toes up to his head, excruciating
12 pain the last two days. He lost his hearing.

13 To see that, I am on medication myself
14 now for post traumatic stress syndrome just to deal
15 with all of that, where a simple, simple error on
16 the parts of the nurses and the doctor to do such a
17 thing.

18 My life has been changed forever since
19 July 25th. My four year old daughter, my 12 year
20 old son.

21 To put a cap on something like this for
22 my children, for their future, your entire life

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1 changes. You don't want that. You just want -- I
2 want justice for everyone. Really I don't want this
3 to happen again where I want to have something
4 changed with chemotherapy and the way that is
5 administered. I hope this would never happen to
6 somebody again.

7 And it also happened in New Jersey a few
8 years before, I found out, and nothing was changed
9 about the way that that is dispensed with chemo.

10 We are all victims. My children are
11 victims. I am a victim, and to have this cap put on
12 is ludicrous. We need to let it go to trial so this
13 can be settled that way, not for somebody set. For
14 somebody who doesn't have this happen to him to
15 think that way, to make these changes, and if it
16 affects them personally, they would be thinking
17 differently right now. If it doesn't happen to you,
18 it's an entirely different picture.

19 Thank you.

20 MR. SCOTT: Thank you very much.

21 What we've heard today has been very
22 moving and I think encourages us to continue to

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1 fight against this legislation. We've heard
2 problems. Many problems really relate to the
3 Patient's Bill of Rights, which we're also trying to
4 get passed, which would require the HMO denying
5 benefits -- make them responsible for the decisions
6 they make.

7 We've heard problems with the cap in
8 real life when the attorney decides to take a case
9 or not. The attorney's fees, if an attorney can't
10 make any money on a case, many of the very worthy
11 cases, people will just be left without
12 representation.

13 We've also heard a real life situation
14 where if there's a \$250,000 cap, you're not going to
15 be able to settle for that.

16 The plaintiff is responsible for all of
17 the expenses in litigation. So if you are given an
18 offer of 75, \$100,000, you might have to take it
19 because by the time you've gone to court, paid all
20 of the expenses and then risk the possibility that
21 you might lose and have to pay all of your expenses,
22 reimburse all of the expenses, you're left with a

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1 situation where the cap is really maybe 75 or
2 \$100,000, not 250.

3 So when we've heard all of the
4 complaints about how limited 250 is, in real life
5 you're not even talking about that.

6 So I want to thank all of the witnesses
7 who have been with us today, and particularly thank
8 John Conyers, our colleague from Michigan, for
9 bringing us all together.

10 MR. CONYERS: Thank you.

11 Bobby Scott, you've done a great job
12 here. My emotions really overcame me today, and I'm
13 glad you were able to step into the breach with Bill
14 Delahunt of Massachusetts.

15 Does anybody have something on their
16 mind they want to say before we walk out of here?

17 MR. GOLDFADEN: I'm Ron Goldfaden. I'm
18 a medical malpractice attorney from New Jersey.

19 I appreciate the opportunity to be here
20 today, too. I greatly appreciate you all being here
21 and listening to the victims. This, as you know, is
22 really the tip of the iceberg. My firm specializes

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1 in these kind of cases, and I have hundreds of
2 stories like this and other medical malpractice
3 attorneys have the same.

4 What can we do to try to change the
5 minds of some of the majority party that are not
6 present here today? I know we're a long way off
7 from thinking strategy, but it's wonderful that you
8 people are here and listening, and I'm concerned
9 about the others that may be voting against us.

10 Are there any thoughts that you have as
11 to what victims can do from here?

12 MR. CONYERS: See me in Bobby Scott's
13 office immediately after this hearing.

14 MR. GOLDFADEN: Okay.

15 MR. CONYERS: Anybody else?

16 MR. McCORMACK: Can I make one
17 suggestion?

18 MR. CONYERS: Sure.

19 MR. McCORMACK: Like I said, I'm a Gulf
20 War vet, and I support my veterans, and what the
21 President is doing I agree with. He's forcing the
22 Iraqi government to hand over documents to get rid

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1 of mass destruction of weapons.

2 Why can't he do that in our homeland
3 with the insurance companies? Force them to open up
4 their books. Show us their records because when
5 they do, we completely rebut their argument.

6 MR. SCOTT: When I was in the state
7 senate of Virginia, we did that, and we found that
8 if you go into their books and look at some of the
9 things that Representative Schakowsky was talking
10 about, you'll find that insurance reform and the way
11 they are regulated would do a lot to reduce
12 malpractice insurance rates.

13 MR. CONYERS: Thanks, everyone. That
14 concludes this forum. We appreciate you all being
15 here.

16 (Whereupon, at 1:45 p.m., the forum in
17 the above-entitled matter was concluded.)

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